

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

151
BRIEF AND JOINT APPENDIX

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,486

JOELENA WELLS SWARN, *Appellant*

v.

**UNITED SERVICES LIFE INSURANCE COMPANY,
a Corporation, *Appellee***

**On Appeal From a Judgment of the United States District
Court for the District of Columbia**

United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 4 1970

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This case has not previously been before this Court.

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BRIEF AND JOINT APPENDIX

STATEMENT OF THE CASE

In this case, the District Court made a finding for the defendant at the conclusion of all of the evidence. It is the plaintiff's contention that said finding was not supported by the evidence and the finding should have, in fact, been for the plaintiff.

The plaintiff, Joelena Wells Swarn, filed suit in this case for the proceeds of an insurance policy on the life of her late husband, Charles L. Swarn. The defendant, United Services Life Insurance Company, had issued a life insurance policy to Charles L. Swarn on or about January 19, 1967, in which the plaintiff, his wife, was the named beneficiary.

The face amount of the insurance policy herein involved, by stipulation, is \$20,000.00.

On January 10, 1967, the late Charles L. Swarn, made application with the defendant insurance company for an insurance policy and the same was issued to defendant on January 19, 1967, said policy to become effective March 1, 1967.

It was the contention of the defendant that the insured, in his application, answered falsely questions 27a, 28 and 30. The answers on the application were written by the agent for the defendant and were signed by the deceased applicant.

Question 27a was "Date of your latest physical examination" to which the applicant responded "September 1964". The court found that this was not a false answer.

Question 28, "Name all other physicians and practitioners you have consulted, or who have examined and treated you in the past five years. State for what conditions and purposes. Give dates and full details. If none, so state." Decedent responded, "None". The court found that question 28 was ambiguous and permitted the inference on the part of an applicant, such as the insured, that the information sought did not relate to minor complaints and ailments. "However, when read in conjunction with question 27, question 28 could not reasonably have been interpreted to exclude service physicians. The record of testimony shows that the insured knew he was suffering from and was being

treated for a serious disease of his genito-urinary tract." The court's finding was therefore predicated upon a finding that the deceased at the time of making his application was suffering from a serious disease of the genito-urinary tract and was being treated for same and knew he was suffering from same and that his answer to question 30 "Are you now to the best of your knowledge and belief in good health and free from defect and deformity?" was answered falsely when the applicant answered, "Yes".

Decedent was a college graduate and 24 years of age at the time of his death on August 22, 1967. He was a Lieutenant in the Air Force, had been trained in the ROTC program and went on active duty with the United States Air Force in September 1966. The decedent was married to the plaintiff in August 1966 and for approximately three weeks they made their home in the District of Columbia. After his assignment to New York State, the plaintiff visited decedent on two weekends and subsequently, when he was stationed in Florida, she spent a considerable period of time with him and concluded a ten day visit with him on December 31, 1966. During all of the aforementioned time, decedent appeared to plaintiff as physically active and in good physical condition. It was the plaintiff's impression that the general physical condition of the deceased was good and at that time he indicated to her that he wanted to begin having a family. (68a J.A.).

The burden of establishing false representation tantamount to fraud was upon the defendant and in his attempt to bear this burden he elicited the testimony of two service physicians, Drs. Jones and Forman.

Dr. Jones is not sure whether he recalls the applicant or not (Dep. Tr. 17; 25a); independent of the records he did not remember Lt. Swarn (Dept. Tr. 6; 19a); in his capacity as examining doctor at Tyndall "We had so many" (service personnel to examine). (35a). He did not recall

any specific conversation with Lt. Swarn and the only thing familiar to him is explaining to him why I wanted a kidney biopsy and as regards what he told Lt. Swarn "Well that would be conjecture seeing it was three years ago and I could not say specifically that I said that he had glomerulonephritis but knowing how I treat other patients, I would say that I told him that I thought he had this". (27a).

Dr. Forman has previously seen the deceased on approximately four occasions when he was assigned in New York State. As late as February 17, 1967, the doctor testified "We were still unable to make a definitive diagnosis. All that could be stated for sure was that there was some pathology in the genito-urinary tract." (9a). The doctor was then asked "Was this pathology of a serious nature", answer, "It had not yet been determined". On each visit to Dr. Forman, it was Dr. Forman's opinion that the deceased was asymptomatic and that on each occasion his condition appeared to improve.

Dr. Hayes, testifying for the plaintiff, on the term "asymptomatic" was interrogated and answered as follows: Question, "Would you give us the definition of 'asymptomatic' " answer, "It is a two part definition. The first part the patient does not present with any change in his general sense of well-being; no symptoms of illness. The second part is, the physician by questioning, is not able to elicit anything that the patient would be typically aware of." Question, "Does the first part of your definition apply to the understanding or comprehension that the patient himself has in his own mind, as to whether or not he has anything which may be called symptoms. (43a) Is that correct?", answer, "Yes, that is correct." Question, "*And when he is asymptomatic in his own mind, he has none of those symptoms to indicate sickness*", answer, "*That is correct*".

Dr. Jones saw the decedent on November 30, December 1, December 14, and December 21st of 1966. Regarding the visit of December 21 the following question was asked "Would you be able to state what Lt. Swarn's physical complaints were by the 21st of December." Answer, "The only physical complains that he had when I saw him was that he actually felt healthy, did not feel sick, but he was having red blood cells and proteinuria. He noticed I know he noticed the red blood cells in his urine and this was all. Otherwise, he was asymptomatic." (23a).

Dr. Jones' conclusion as regards what he told the defendant was only inferential and this is established by his testimony on page eleven of the transcript. Question, "When was he told of the diagnosis, if you know" Answer, "I am sure I talked with him. I generally tell all my patients what they have and what I think they have when I see them and talk with them. I am sure that I talked with him at that time and told him that I wanted to get a biopsy to prove his diagnosis." "I did not write it down, you know. But, otherwise, I would not have been able to get a kidney biopsy. He wanted to know why did I want it," Question, "Now do your records reveal when the kidney biopsy was taken", answer, "There was not one done at Tyndall but going through the records he did have one—lets see—it says here that it was done 3-17-67." (22a)

The testimony then of both Dr. Forman and Dr. Jones is that the decedent was asymptomatic when last seen by them and that he was feeling good the last time seen by a doctor December 21, 1966.

One of the conclusions of law was as follows in part:

"That on basis of his stated symptoms and the medical information received by him he knew he had a serious disease of the genito-urinary tract for which he was being treated". Dr. Hayes when being cross-examined by coun-

sel for the defendant on page 51a, 52a was given a long hypothetical question which included among other things the assumption "and he was made aware by the doctors that diagnosed his condition as being glomerulonephritis." and the doctor was asked what his opinion was as to whether or not an applicant's answer to the question "Are you now to the best of your knowledge and belief in good health and free from defect or deformity" and the applicant's answer to that would be in the affirmative. Then the doctor was asked whether or not such a statement was true or not. Dr. Hayes after first satisfying himself that the question contained the assertion that the applicant was informed, then answered the question in the affirmative. The underlying fact to be determined by the fact finder in this case was whether or not the applicant knew in fact that he was suffering from a serious disease of the genito-urinary tract.

ISSUES PRESENTED FOR REVIEW

I

Whether there was probative evidence of such weight and persuasiveness to warrant the court in finding that the defendant, insurance carrier, had legally borne its burden of proving that the deceased applicant had lied in stating that to the best of his knowledge and belief he was in good health and free from defect or deformity at the time of making application for an insurance policy.

REFERENCE TO RULINGS

This appeal is taken from a "Findings of Fact and Conclusions of Law" Order filed in the lower Court on April 22, 1970. The Order was signed by the Honorable Barrington J. Parker, Judge, United States District Court for the District of Columbia.

ARGUMENT**The District Court Erred in Finding for the Appellee in That
The Appellee Failed To Carry Its Burden of Proof**

The contract of insurance in issue was accepted by the Appellee on or about January 19, 1967 (Pre-trial Order). The insured, Lt. Swarn, died on August 22, 1967, at age 24, at which time his premium payments were current. His wife, Joelena Wells Swarn, the named beneficiary on the insurance policy, survived him and brought her action in the District Court for the District of Columbia for the proceeds of the insurance policy.

The appellee refused payment and in defense of its position contended that the following questions were asked of the insured and his answers given. It is their contention that the insured answered these questions falsely:

27(a). Date of your last physical examination, month *September* year 1964.

(b). Details of any hospitalization, medication or treatment recommended as a result thereof. If none so state. **NONE.**

28. Name all other physicians and practitioners you have consulted or who have examined or treated you in the last five years. State for what conditions or purposes. Give dates and full details. If none, so state. **NONE.**

30. Are you now to the best of your knowledge and belief in good health and free from defect or deformity?

Yes.

If "No", explain.—No response.

The defendant thereby invoked the defense of fraudulent misrepresentation and had the burden of proving same.

"Essential elements in establishing a suit such as this in which the burden has been assumed by and is clearly upon the appellant . . . To establish such evidentiary fact

of bad faith, falsehood or deception, it is held in a multitude of cases that the proof must be clear, satisfactory, convincing . . . In fact, in some equity suits we have held that a mere preponderance in the evidence is not sufficient." *Service Life Insurance Company v. McCullough*, 13 N.W. 440 (1944) Supreme Court of Iowa.

The Supreme Court of Colorado in the case of *Olinger Mutual Benefit Association v. Christy*, 342 Pacific 2d 1000 (1959) stated the burden upon the insured in a slightly more emphatic fashion: "Appellate Courts of this State have said that contracts may be avoided only after the presentation of clear and convincing evidence or evidence establishing beyond reasonable doubt that the fact of misrepresentation, fraud, concealment or mistake . . ." The Court went on to say: "*Uncertainty and ambiguity in the answers appearing in the application and the equivocal statements of attending physicians must all be resolved against the insurer.*"

The Court in its findings of fact concluded that the applicant answered question 27 correctly. Further found that question 28 was "ambiguous and permitted the inference on the part of an applicant such as the insured that the information sought did not relate to minor complaints and ailments." The Court went on to say "However, when read in connection with question 27, question 28 could not reasonably have been interpreted to exclude service physicians. The record of testimony shows that the insured knew he was suffering from and was being treated for a serious disease of his genito-urinary tract."

The crucial finding of the Court, therefore, is contained in paragraph 2 of its "Conclusions of Law": "On January 10, 1967, when the insured made application for insurance he knew he was not in good health and free from defect. That on the basis of his stated symptoms and the medical information received by him he knew he had a serious disease of his genito-urinary tract for

which he was being treated. That the insured's answer to question 30 was 'FALSE' ''.

The basic question then on appeal is what facts were proven in evidence to warrant the Court's conclusion of law that the applicant made a false answer to question 30.

We will demonstrate 1) that the decedent was asymptomatic and 2) received no information regarding his condition and the Court's finding was therefore without foundation.

In the fact situation of this case the Appellee had the burden of showing the following:

1. The Deceased died from a disease he had at the time of entering into the contract of insurance;
2. He knew he had said disease and falsely stated he was in good health.

The record is silent as to the cause of death. "The burden was then on the defendant to produce evidence showing not only what caused the insured's death but it was required to go further and show that at the time the policy was issued on February 11, 1939, the insured was suffering from the disease that caused or contributed to cause his death." *Blanke v. American Life & Accident Insurance Co.*, 230 S.W.2d 134 (St. Louis Court of Appeals, decided May 5, 1950.)

It neither has been established as a fact that the deceased had the disease "glomerulonephritis" at the time of contracting but only that Dr. Jones thought that was the disease he had. On February 17, 1967, Dr. Forman opined: "We were still unable to make a definite diagnosis" (9a).

But the criterion is not what disease he may have had. *"Although an insured may in fact be suffering from some insidious disorder or latent disease, if he is not*

aware of it the right of recovery on the policy is not affected. . . . The question was not what they showed but what the insured was told about them and what he honestly believed to be the fact; to have received such testimony, therefore, would only have led to diversion from the real issue." Travellers Ins. Co. v. Heppenstall Co., 61 A 2d 809 (Supreme Court of Pennsylvania 1948).

Burton v. Pacific Mutual Life Insurance Co. (1951), 368 Pa. 613, 84 A 2d 310, was even more emphatic: "The evidence discloses beyond any doubt that Burton was suffering from an incurable cancer of the throat at the time he applied to defendant for insurance. Obviously, he was not in good health at the time and he was being treated for more than defective tonsils. *However, there is absolutely no evidence that he knew his answer to those questions were false. Defendant seeks to have us infer knowledge from the long course of treatment and the medical records. This we cannot do under the facts here presented.*"

As to what the insured was told by the two doctors who examined him in the months of October, November and December the record is unclear; but it is the accepted fact that all during the period of his examinations he was asymptomatic. In the case of Johnson v. Metropolitan Life, 251 Atl. 2d 260 (S.C. of New Jersey 1969) there was testimony to the effect that the doctor told his patient he was suffering from "coronary insufficiency" and regarding this point there was the following colloquy:

"Q. And did you tell Mr. Johnson what your findings were? A. I don't have anything written to that effect, but I'm sure I did."

The Court went on to say: "Whatever Dr. Grove told his patient, it appears he did not tell him that coronary insufficiency was itself a disease" and later "There was no testimony as to what he told the patient at that time."

Regarding the ambiguity of question 28, a witness called by the defendant, Mrs. Drebes, was asked the following questions and gave the following answers:

"Q. Somebody could infer from name all others that they mean other than the service medical referred to in question 27, couldn't they? A. I suppose they could, but I don't think it's done very often because usually

Q. But it's done, isn't it? A. It might be.

Q. "It's misunderstood by the applicant, isn't that correct? A. Yes the applicant might." (93a)

If by reason of an ambiguity in the form of the question the answer may state the truth or may state a falsehood, according as the ambiguity is resolved the question is construed most strongly against the insurer? (Johnson v. Metropolitan Life, 251 A 2d p. 262).

In the case of Parker v. Iowa Mutual Tornado Association 220 Iowa 262 the court said: "*In the consideration of this case, it must be remembered that the general rule of construction in relation to insurance contracts is that they are most strongly construed against the insurer and in favor of the insured, especially where forfeiture is involved, so that indemnity will be granted rather than denied . . . the court will deal strictly with the insurer, who drafted the proviso, and will resolve all doubt in favor of payment . . . and ambiguity in the insurance contract must be construed in favor of the assured or beneficiary.*"

Our own court in treating of the subject in U. S. v. Thompson, 210 F 2d 724 said: "Of course, we do not say the veteran did not intend to deceive. On the whole there are indications that he did. But such indications are not enough. Fraud must appear by clear and satisfactory or convincing evidence."

As we have already suggested the appellee did not prove cause of death or that the decedent suffered from

a serious disease of the urinary tract on January 10, 1967.

And unlike most cases of this nature, there were no admissions introduced showing that the deceased at a time previous to January 10, 1967 had told a doctor or layman that he had a serious disease. This in spite of eight visits to such doctors.

The allegation of fraud in the instant case is predicated on two contentions: 1) eight visits to two doctors over a period of approximately seventy-five days and 2) information given the decedent by Dr. Jones.

With regard to the first proposition, the eight visits were ordered by the Doctors with the exception of the first visit which was a routine visit associated with a change of assignment. On every visit the decedent was asymptomatic. "Defendant seeks to have us infer knowledge from the long course of treatment and the medical records. This we cannot do under the facts here presented". *Burton v. Pacific Mutual Life Insurance Co.*, cited *supra*.

The second contention of the Appellee was that the decedent was told by Dr. Jones that he had a serious disease of the urinary tract. Such a contention has no support in the record as the following excerpts from Dr. Jones' testimony will demonstrate:

A. I have down here, "the patient remains asymptomatic. Physical examination is within normal limits. Diagnosis glomerulonephritis. Sent to Medicine for biopsy to prove diagnosis."

Q. When was he told of the diagnosis, if you know?

A. I'm sure I talked with him. I generally tell all my patients what they have and what I think they have when I see them and talk with them. And I'm sure I talked with him at that time and told him that I wanted to get a biopsy to prove his diagnosis.

I didn't write it down, you know. But, otherwise, I wouldn't have been able to get a kidney biopsy. He wanted to know why did I want it.

Q. Now, do your records reveal when the kidney biopsy was taken?

A. There wasn't one done at Tyndall. But the records, going through the records, he did have one—let's see—it was here that it was done 3-17-67. (22a).

See *Johnson v. Metropolitan Life*, cited *supra*.

It is contended by the Appellee that a symptom the decedent had was "proteinuria", but the following excerpt demonstrates the decedent was unaware of this symptom:

Q. How would he notice the proteinuria?

A. Well, he wouldn't notice the proteinuria except that there is some burning with proteinuria, that's the only thing in some patients. He would have had to have been told that he had proteinuria.

Q. So from his point of view physically he had smoky colored urine and burning sensation upon urination? (23a).

The vagueness of the doctor's recollection is indicated as follows:

Q. Do you recall any specific conversation you had with him on any of these four dates that you saw him?

A. No. The only conversation that is at all familiar with me would be the explaining to him why I wanted a kidney biopsy and that he was going to Medicine and the reason for this. (26a, 27a).

Q. Do you recall specifically whether you told him or do you just generalize since you told all of your patients that you must have told him something?

A. No. Specifically I would tell him that we need the kidney biopsy in order to evaluate what I thought was wrong with him.

Q. Did you tell him it was just a thought on your part?

A. No.

Q. What did you tell him, if you remember?

A. Well, that would be conjecture, seeing that it was three years ago that I couldn't say specifically that I said he had glomerulonephritis. But knowing how I treat other patients, I would say I told him that I thought he had this. (27a).

And so there can be no doubt that the doctor did not recall he tells us:

Q. And as regards these specifics of what you told Lt. Swarn, you don't recall what they were?

A. No, I couldn't specifically recall a conversation. (30a).

Having failed to testify as to what he told the decedent, the doctor is left to conjecture as to what the decedent may have comprehended and the conjecture has no support in evidence.

Q. And further that he was aware of the fact that he was suffering from a condition known as glomerulonephritis.

Mr. O'Malley: I object to the question. But you can answer.

Q. Is that true?

A. Well, I would say I'd told him that he had glomerulonephritis. Now, as he said, I can't be sure that he comprehends, but I would say that he knew he had glomerulonephritis and a kidney disease. (Jones p. 32).

Q. When a person is asymptomatic, isn't it sometimes difficult for a doctor to persuade him that he is sick?

A. True. (34a).

"The question was not what they showed but what the insured was told about them and what he honestly believed to be the fact." Travellers v. Heppenstall, cited supra.

The evidence, in the instant case where the insured was always asymptomatic, was neither clear nor satisfactory and the very best interpretation which could obtain is that the insured might have been informed that

he might have had a serious disease of the urinary tract. This is not satisfactory. "The only physical complaints that he had when I saw him was he actually felt healthy, didn't feel sick, but he was having red blood cells and proteninuria." (23a).

Not relying on the Appellee's failure of proof the Appellant established that the amount of insurance (the face amount of the policy was \$10,000.00), was a very normal amount for a person in the deceased's station of life; that, because of his financial posture he asked on January 10, 1967 that the insurance not go into effect until March 1, 1967; that within two weeks of contracting for insurance he informed his wife he desired her to begin having a family and he appeared vigorous and in good health to the Appellant. There was further evidence that the agent of the insurer filled in most of the policy application which was signed by the decedent. (90a).

On the basis of the record herein it is respectfully prayed that the judgment of the lower Court be reversed and judgment entered for the Appellant.

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APPENDIX

[1]

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

No. 3128-68 (civil action)

JOELENA WELLS SWARN

v.

UNITED SERVICES LIFE INSURANCE COMPANY

DEPOSITION

The deposition of Dr. Mel Forman, taken on behalf of the defendant, pursuant to the Federal Rules of Civil Procedure, before Stephen F. Bernfeld, a Notary Public within and for the State of Connecticut, on the 25th day of August, 1969, at 2:30 in the afternoon, at the home of Dr. Mel Forman, Alma Rock Road, Stamford, Connecticut.

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Stephen F. Bernfeld
Certified Court Reporter
Superior Court
Bridgeport, Connecticut 06604

[2]

Mel Alan Forman

after being first duly sworn by a Notary Public of the State of Connecticut, thereupon testified as follows:

Direct Examination, By Mr. Thorup:

Q. Doctor, you are a physician, is that correct? A. Yes.

Q. Do you have a specialty? A. No.

Q. Are you presently practicing in the State of Connecticut or in New York? A. You mean active medical practice?

Q. Yes. A. No.

Q. Exactly what are you doing now, Doctor? A. I'm employed as a Assistant Medical Director with United Medical Service of New York.

Q. Where is that located? A. On 2 Park Avenue, New York City.

Q. Would you state what your title is? A. Assistant Medical Director.

Q. How long have you held this position? A. About ten months.

Q. And prior to that, what did you do? A. I was in general practice.

Q. Where [3] A. In New Canaan, Connecticut.

Q. I think we omitted asking you your address. A. Alma Rock Road, Stamford, Connecticut.

Q. How long have you lived at Alma Rock Road? A. Thirteen months.

Q. And prior to that? A. 1307 Hope Street, in Stamford.

Q. For how long a period of time did you live there? A. At my previous address?

Q. Yes. A. About eight or nine months.

Q. And prior to that, Doctor? A. Prior to that, I was in the United States Air Force.

Q. Would you state approximately what period of time you spent with the United States Air Force? A. I entered the Air Force in September, 1965, and was discharged from the Air Force in September, 1967.

Q. During that period of time, at what place or places were you stationed? A. I was, after basic training, after three weeks of basic training in Montgomery, Alabama, I was stationed at Hancock Air Force Base in Syracuse, New York.

Q. For the full period? A. For the full duration, yes.

Q. And would you state what your title and duties were at [4] Hancock Air Force Base. A. I was a general medical officer, working in the 642 USAF Dispensary at Hancock Air Force Base.

Q. Doctor, where did you receive your medical training? A. At the University of Wisconsin.

Q. That is, you graduated from the University of Wisconsin Medical School? A. Yes.

Q. And where did you go from there? A. From there I interned at Cedars Of Lebanon Hospital in Los Angeles, California.

Q. Are you qualified on any boards, do you have any specialty in practice of medicine, or did you? A. No, I'm not a specialist. I have been doing general practice.

Q. Now, while you were stationed at Hancock Air Force Base in New York—first let me ask you this: Were you stationed there on or about October, 1966? A. Yes.

Q. Through February of 1967, at least between those periods? A. Yes, yes.

Q. Doctor, did you receive certain documents that I forwarded to you in the mail? A. Yes, I have.

Q. And these consist of certain medical records extracted from the Air Force records? [5] A. Yes.

Q. Now, they concern a Lieutenant Charles Lightford Swarn, do they not? A. Yes.

Q. Doctor, did you have occasion to examine Lieutenant Swarn at any time while you were stationed at Hancock Air Force Base in— A. Yes.

Q. Would you state the first occasion upon which you performed an examination? A. From the records, the first occasion—

Mr. O'Malley: Wait. Do you have an independent recollection, Doctor?

The Witness: No, I don't.

A. From the records, the first time I had examined Lieutenant Swarn was on October 13, 1966.

Q. When you read these records that I forwarded to you, did they serve to refresh your recollection to the point where you have a personal recollection of this particular individual? A. I think so. I think so, yes.

Q. You state that the first occasion was October 13, 1966. Would you state under what circumstances Lieutenant Swarn came to you? A. Well, again, from the records that I have before me, he apparently had a problem with the genital urinary tract, complaining [6] of the symptoms of frequency of urination and occasional pain on urination for a period of several days. And examination was therefore centered about the complaints which were made by the patient.

Q. Do you recall or do the records state whether or not you yourself performed this examination? A. I did perform the examination.

Q. Was anybody with you at the time, to assist you? A. I think that the nurse, a nurse who works in the dispensary, was also in the room. I'm not sure.

Q. Would you state what was done with regard to Lieutenant Swarn at that time? A. Well, at that time we, insofar as examination was concerned, I felt to see if he had any tenderness over the kidney areas. That's located in the back over the costo vertebral angle. And there was apparently no tenderness. Subsequently, laboratory studies were performed and a urinalysis and urine culture was done. The urine culture revealed bacteria in the urine. Lieutenant Swarn was placed on Gantrisin therapy. Gantrisin is a antibiotic.

Q. That was all done on the 13th of October? A. Yes.

Q. Tell me, was the bacteriologist's report prepared and given to you on that date? A. The urine culture took

about—well, a urine culture normally takes several days to perform. However, he was started [7] on antibiotic treatment the day of his visit.

Q. Now, again, what doses and with what frequency was he prescribed Gantrisin? A. The dose was one gram of Gantrisin four times a day.

Q. Did he take that himself? A. Yes, I believe so.

Q. Is that in a pill form or is it liquid form? A. It's a pill, a white tablet, I believe.

Q. Doctor, do you recall whether or not you advised, you or anyone in your presence, advised Lieutenant Swarn of his condition? A. When you say of his condition, do you say—

Q. What was wrong with him, so far as you could— A. At the time, yes. Yes, I advised him.

Q. Now, is that the extent of what occurred on the 13th, so far as you recall and your records reflect? A. Yes.

Q. Now, when did you next see him, if at all? A. The next visit was about two weeks later, on October 26, 1966.

Q. Did he initiate that visit or was he told to return at that time? A. He was told to return.

Q. Would you state what, if anything, your own recollection— A. We discussed how he was feeling at the time. And he [8] apparently, his symptoms were apparently improved, and we continued the anti biotics for another two weeks.

Q. Was there a physical examination at that time? A. No.

Q. So, he continued to take the Gantrisin? A. Yes.

Q. For another two weeks. When, if at all, did you see him again? A. I saw him again on November 7, 1966, at which time he had almost completed a month's therapy of the antibiotic, and again he was asymptomatic. We did another—

Q. When you say asymptomatic— A. He was not complaining of any symptoms at the time. And we took another urine culture, and it showed no growth of any bacteria.

Q. Was there any further examination performed on that date? A. I don't think so. A urinalysis was also done.

Q. Now Doctor, was any other drug prescribed at that time? A. Pyridium was prescribed.

Q. What is pyridium prescribed for? A. Pyridium is not antibiotic. It's just an analgesic to relieve pain in the urinary tract.

Q. Did he still complain of pain in the urinary tract? A. No, he wasn't complaining of pain at the time.

Q. Did you see him subsequent to that date? [9] A. Yes, I did.

Q. Was that on his initiative or did you tell him to return? A. I told him to return.

Q. And would you state when that was? A. It was on the 17th of November, 1966.

Q. And would you state what, if anything, you found upon that visit? A. Well, at that time, after the period of time where the patient had been treated had elapsed I wanted to do a complete laboratory studies, to determine if there was any illness existing. And I did a rectal examination at the time, and felt a tender prostate gland. We also did a complete blood count, a urinalysis, a urine culture, a blood urea-nitrogen, serum-creatinine, total serum proteins, and albumin. What I have in the notes here, it states that he was to be followed at the next base. So, I assume he was being transferred at that time to another Air Force base for temporary duty. I forwarded the records with him, I believe, to take to his next base.

Q. Doctor, of the records that I forwarded to you, would you please go through them and set aside in a separate pile those that were prepared by you, not at your direction, but by you yourself. Just any page there that has your directions on it or your notes on it. A. I have separated the sheets.

Q. Those are the ones that were not, right? These are the ones [10] that are? A. Right.

Q. Now, Doctor, the papers that you are handing me, I'm going to hand the Reporter, and ask him to mark them.

(Papers marked Defendant's Exhibits 1A through 1K).

Q. Doctor, I show you the Defendant's 1I, and call to your attention that in the corner is a block which says "Emergency Appointment; date, 17 November 66." Would you state for the record under what circumstances that particular notation would be made and by whom? A. Well, I think that it is a stamp used routinely in the Dispensary when a patient comes in for a visit. We had no emergency room as such, and military sick call came in on this basis.

Q. Would this indicate that there had not been a previous appointment for him? In other words, that he had not been told to appear on the 17th necessarily? A. No. I don't think so.

Q. Does it mean that he did have a regular appointment, and that this stamp was just placed on there arbitrarily? A. As far as I can recollect, the military personnel didn't come in on a—didn't make advanced appointments. They were seen on a basis different than those of dependents, the military dependents.

[11] Q. I see. So, this differentiated between the military and the dependents, more or less? A. At times yes, and at times no. The procedure changed several times while I was stationed at Hancock Field. And often times whether or not the stamp appeared depended upon who the nurse was. In other words, some nurses simply wrote in the date without using a stamp.

Q. Now, Doctor, did you have an occasion to see Lieutenant Swarn upon his return from temporary duty in Florida? A. Yes, I did.

Q. Would you refer to your records, I think first to Defendant's 1, and state when and under what circumstances you saw him at that subsequent time? A. I saw him on February 15, 1967.

Q. Did you perform an examination on that date? A. We read over the consultation—I read the consultation that he had with an internist while at Tyndall Air Force Base in Florida; and upon that recommendation, referred him to the V.A. Hospital urology clinic in Syracuse, New York.

Q. Did you prescribe any drugs or perform any further treatment? A. A urinalysis was done at that visit.

Q. Was this under your direction? A. Yes.

Q. Do you have the results of that urinalysis? [12] A. Yes, I do.

Q. Let me see what you're referring to. This is Defendant's 1F? A. Do you want all the findings in urinalysis or the abnormal findings?

Q. The abnormal findings, if any. A. There was 4 plus albumin. There was blood in the urine, 10 to 15 white blood cells per high-powered field. And bacteria.

Q. Would you state how those findings differ from the normal findings? A. Normally there is no albumin, or there may be a trace under normal conditions. There is normally no blood in the urine; normally no bacteria in the urine.

Q. Would you state whether, in your opinion, this is slightly abnormal or highly abnormal?

Mr. O'Malley: I object to the question. We don't know what his expertise is.

Q. To what degree of normality was this; was it great or small? A. I would say it was moderately abnormal.

Q. Doctor Forman, did you have occasion to see him subsequent to that date. A. No. I don't think so.

Q. Do your records reflect when he went to the V.A. Hospital in Syracuse? A. The dates of his examination were enclosed on one of the [13] mimeographed sheets that were sent to me. I believe his hospitalization at the V.A. Hospital in Syracuse was from February 23, 1967, to May 3, 1967.

Q. Now, do those records indicate whether or not that hospitalization in Syracuse was continuous until May 3?

Mr. O'Malley: Object to that. These aren't your records, are they, Doctor?

The Witness: No.

Mr. O'Malley: They were supplied to you by someone else?

The Witness: Yes.

Mr. O'Malley: I object to all the interrogation about that.

Mr. Thorup: Strike the question.

Q. Doctor, based upon your examinations of Lieutenant Swarn prior to his being transferred or sent on temporary duty to Tyndall, were you able to come to a conclusion, or did you have an opinion as to the thing from which he was—of which he was complaining, the cause of the thing which he was complaining?

Mr. O'Malley: I object to that. He wasn't complaining just before he went to Tyndall. He was asymptomatic, I believe the doctor—

Q. All right, then, an opinion as to that which caused his original complaint? A. No definite conclusion was formed.

[14] Q. Would you state, upon his return from Tyndall, and your examination of him upon that occasion, whether or not you had reached or could have reached an opinion?

Mr. O'Malley. Wait a minute. Are we talking about February 17, '67?

Mr. Thorup: Right.

Mr. O'Malley: And the question is: Does he have an opinion as to what his condition was then?

Mr. Thorup: At that time.

A. We were still unable to make a definitive diagnosis. All that could be stated for sure, was that there was some pathology in the genital-urinary tract.

Q. Was this pathology of a serious nature, in your opinion? A. It hadn't yet been determined.

Q. Then, Doctor, in summary, how many occasions did you see Lieutenant Swarn for purposes of examination

and medical consultation between the initial visit and his being transferred to Tyndall Air Force Base? A. Including the initial visit?

Q. Including the initial visit. A. On four occasions.

Q. And on these four occasions, do you recall, with the exception of the first occasion upon which I believe you stated that there was probably a nurse with you, on these four occasions were you assisted by any other doctors in your examination or [15] treatment? A. I don't think so.

Q. I believe you stated there was one further examination upon his return from Tyndall Air Force Base on February 17, is that correct? A. February 15.

Q. February 15, I'm sorry. Now, on that occasion, was it your decision to have him transferred to the V.A. Hospital in Syracuse? A. I believe so, yes.

Q. Was he advised of this fact at that time?

Mr. O'Malley: What fact?

Q. The fact that he was being transferred, recommended for transfer to the V.A. Hospital in Syracuse. A. Yes.

Q. Doctor, to the best of your recollection, before he went to Tyndall Air Force Base in Florida, was he advised to continue his medical consultations and treatment in Florida? A. Yes.

Q. Was he referred to any particular persons or organization or department at that base? A. He was told to go to the medical facility that was available at his next base.

Q. And you received certain records that were prepared at Tyndall Air Force Base in Florida? [16] A. Upon his return?

Q. No. Did you receive from me certain records that were prepared at Tyndall Air Force Base? A. Yes.

Q. Were these records prepared in the ordinary course of business at the Air Base? Would you look at them please and state whether or not these are prepared in the ordinary course of business or do they contain opinions of any officials at that base? A. Yes, they do.

Q. Are there some that are prepared just in the ordinary course that contain facts which are found upon examination and do not contain opinion? A. I'm having difficulty making the distinction between opinion and—

Mr. O'Malley: Aside from that, you don't know whether they're made in the ordinary course of business or not, down at Tyndall Field? A. I'm confused what you mean by ordinary course of business.

Q. Doctor, you're familiar with U.S. Air Force medical forms, are you not? A. Yes.

Q. And are they, upon your examining the forms that were prepared at Tyndall Air Force Base, do they appear to be the same forms that you are familiar with and worked with and used [17] at Syracuse and Hancock Field? A. Yes.

Q. And are these forms and various documents that you have, that were prepared at Tyndall, were they prepared in more or less the same manner as they were at Hancock Field?

Mr. O'Malley: I object to that. He doesn't know they were prepared at Tyndall. But, he can answer.

Q. At Hancock, I'm sorry. Are they prepared in the same manner, do they appear to be the same sort of forms, prepared in the same way as they were, in your experience, at Hancock Air Force Base? A. I believe they are similar. The forms used are similar to those that we also used.

Q. Was your recommendation, upon the occasion of his visit on February 15, based wholly on your experience with him and your examination of him, or based in part upon your own examination and in part upon those records which were prepared in the ordinary course of business at Tyndall?

Mr. O'Malley: I object to that.

A. It was the latter. It was based in part on the medical workup he received at Tyndall, as well as the findings on examination at his return to Hancock.

Mr. Thorup: I have no further questions.

Q. Doctor, while Mr. O'Malley is looking those over, let me ask you one further question: Was Lieutenant Swarn at all [18] times kept advised by you of your findings and of his condition, sofaras you could determine?

Mr. O'Malley: I object to that as calling for an opinion, on the part of the Doctor, not as a basic factual question as regards each time he saw the patient.

Q. Well, let me rephrase it then: Upon each of the visits that you enumerated and at the conclusion thereof, was he appraised of his medical condition sofaras it could be ascertained at that time. A. Yes, I believe so.

Cross-Examination, By Mr. O'Malley:

Q. Doctor, this organization that you're now with, what is the nature of that organization; what's their function?

A. They are the carriers for the medicare program in the New York area, as well as having their own insurance plans.

Q. And what is your particular function in that organization? Is it medical or administrative? A. It's administrative. It's an administrative function.

Q. And for how long have you been associated with that organization in that capacity? A. For about ten months.

Q. Immediate prior to that, were you actively engaged in the practice of medicine? A. Yes.

Q. Where? [19] A. In New Canaan, Connecticut.

Q. For how long a period had you been so engaged? A. Eight months.

Q. When did you complete your internship? A. In June, 1965.

Q. How soon after completing your internship did you go into the service? A. About two and a half months after my internship.

Q. And after getting out of the service, did you then go to New Canaan, is it where? A. Pardon me?

Q. Where did you go after getting out of the service?

A. We came to the area where we're now living.

Q. Do you have a recollection in your mind as to what Lieutenant Swarn looked like? A. I believe so.

Q. You're not sure, are you? A. I can't be positive. But, I think I can recollect what he looked like.

Q. You apparently, during your tour in the service, had examined hundreds of men, had you not? A. Yes.

Q. Was it more than hundreds of men; could it have been thousands? A. I really couldn't estimate how many.

[20] Q. It's a very large number? A. I would say so, yes.

Q. And you didn't have any particular identity with one rather than another of those patients, did you? A. By that what do you mean?

Q. In other words, was there something about your association with various individuals whom you treated that would make them memorable to you this day? A. Well, on several occasions we saw individuals who probably had more frequent periods of illnesses, than others; and on that basis, one might remember some people more than others.

Q. Do you know how many you would recall now as you sit here, that you had treated while in the service? A. Do you mean by name?

Q. Yes. Name and description and physical characteristics? A. Well, I can remember a lot of faces certainly, that I've treated. But, I would be hard put to recall the names of the individuals.

Q. Was there anything particularly significant about Lieutenant Swarn, that you're able to recall him, and you can't recall others? A. Yes. There was, upon his return from temporary duty, when I received his folder containing the medical information, the medical workup that he received down there, which—

Q. On February 15? A. Yes.

[21] Q. With regards to conversations that you may have had with Lieutenant Swarn, do you recall those conversations? A. No, I don't.

Q. So, you're pretty much limited in your recollection to what is written on the various papers representing the dates of your appointments with him, is that correct? A. Yes.

Q. And on any of those notations, do you indicate what you said to Lieutenant Swarn regarding his condition? A. No.

Q. And on his first visit to you, on October 13 of 1966, have you recorded or do you recall what his particular complaints were on that day? A. I can only remember what I have written down on the form.

Q. On that form, does it indicate that you took a history from Lieutenant Swarn? A. Well, it only indicates those points relating to his complaint at the time he came to the dispensary.

Q. What on those notations for October 13, 1966, indicates to you specifically what Lieutenant Swarn stated to you to be his complaints? A. The statement of frequency and occasional dysuria for the past few days.

Q. Well, he didn't tell you of occasional dysuria? A. Those are medical terms. I used laymen's terms. I applied [22] laymen's terms in arriving at medical terminology.

Q. So, you don't recall what he told you? A. Not his exact words, no.

Q. And the expression you used there is pretty much your observation and diagnosis, isn't it? A. Yes.

Q. And the next time you saw Lieutenant Swarn, on October 26, of 1966, he was asymptomatic, right? A. Yes.

Q. And the same thing was true on November 7? A. Yes.

Q. The same thing was true on November 17? A. Yes. Except for the part of the physical examination on November 17, where his prostate gland was tender to palpation.

Q. Do you recall or do your notes indicate what you said to him with regards to your observation of that condition? A. No, I can't recall exactly what I said to him at the time.

Q. And many of these notations that you enter into his medical file, as a practice you don't inform the patient of those notations, do you? You don't tell the patient everything that you put into his medical file? A. Well, not—I try to relate to him those things which were wrong, or—no, I don't go through each specific study and test; and give him the exact findings that we detected. But, he's generally advised though of what was wrong and what has to be [23] done.

Q. Doctor, with the particular symptoms that you had seen on October 13, and with the various urinalyses that were performed, if it was a medical specialty area that these would fall into, what would it be? A. Into the specialty of internal medicine, and then the sub-specialty of urology.

Mr. O'Malley: That's all I have.

Redirect Examination, By Mr. Thorup:

Q. Doctor, when you requested various laboratory tests to be run, what was it necessary to secure from Lieutenant Swarn; did you secure a certain amount of blood to be tested? A. Blood and urine.

Q. Did you do that yourself or was that done under another doctor's control? A. I believe that was done in our laboratory which we had at the dispensary.

Q. At this time, who would have taken his blood sample? A. The laboratory technician.

And the same with urine sample? A. Yes.

Q. Was that done in the same physical office in which you performed your examination or was that done at another physical location? A. It was within the same building, not the same office.

[24] Q. Do your records reflect approximately how many times samples of blood were taken and samples of his

urine were taken prior to his going to Tyndall Air Force Base? A. I would have to refer to the forms which you sent to me.

Q. Would you please? A. The records indicate that urine samples were obtained on three occasions, and blood was obtained on one occasion. This is prior to his departure to Tyndall Air Force Base?

Q. Yes. Now, was there a subsequent sample of either urine or blood or anything else taken upon his return to Hancock Field? A. Yes, there was, upon his return, yes. A urinalysis was performed on his return to Hancock Field.

Q. Was a further blood sample taken? A. No.

Q. Doctor, to the best of your recollection, was Lieutenant Swarn informed at any time prior to his going to Tyndall Air Force Base, that his red blood count was abnormally high?

Mr. O'Malley: By the Doctor, you mean?

Q. Told by you or by anyone—specifically that his blood count was high? A. No.

Q. But, he was told— A. You mean—are you speaking of the urine blood, blood in the urine or—

Q. No, either his red blood count or his blood in the urine? [25] A. I can't recall exactly what was told to him with regards to his laboratory findings.

Q. What probably was told to him, if anything?

Mr. O'Malley: I object to the question.

Q. In your mind, was there a greater probability that he was told that there was something wrong with him, than that he was not told?

Mr. O'Malley: Same objection. Speculative.

A. Well, he was probably told that there was abnormal findings in the urine. But, exactly what the findings were, I don't think those were related.

Q. What is dysuria? A. Dysuria is pain on urination.

Q. Did he complain of anything else, concerning his urine, that is reflected in your notes? A. Frequency. That is, having to void more frequently than normal.

Q. Did he complain about anything having to do with

the color of his urine? A. I can't recall. It isn't so stated in the record.

Q. Is blood in the urine generally visible to the naked eye? A. It depends on what the quantity of the blood present—

Q. Would these records that you have indicate whether or not this had an effect upon the color of his urine?

Mr. O'Malley: Are you talking about the Tyndall Field? [26] Mr. Thorup: No, prior to Tyndall Field.

A. The report doesn't indicate—excuse me, on October 13, 1966, the color of the urine was listed as yellow and cloudy. But, there doesn't appear to be any indication on red blood in the urine.

Mr. Thorup: That's all I have.

Mr. O'Malley: No questions.

(Whereupon, at 3:38 p.m., this examination was closed)

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[2] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3128-68

JOELENA WELLS SWARN, *Plaintiff*,

v.

UNITED SERVICES LIFE INSURANCE COMPANY, *Defendant*.

DEPOSITION

of Norman E. Jones, M.D., taken on behalf of defendant, pursuant to proper notice, at the Radiation Therapy Division, Shands Teaching Hospital and Clinics, Gainesville, Florida, commencing at approximately 1:30 o'clock p.m., Monday, September 22, 1969, before Joann Jordan Tullis, a Notary Public in and for the State of Florida at Large.

APPEARANCES:

Thomas M. O'Malley, Esq., Attorney for Plaintiff.

Kent D. Thorup, Esq., 733 15th Street, N. W., Washington, D. C., Attorney for Defendant.

[3]

Dr. Norman E. Jones.

after having been produced and after having first been duly sworn, then testified as follows:

Direct Examination

By Mr. Thorup:

Q. Doctor, would you state your name, your residence address and your professional address and title? A. Norman E. Jones. Residence is 2236 Northwest 18th Avenue, Gainesville, Florida. Working address is Shands Teaching Hospital, Department of Radiotherapy.

Q. And your title at the Shands Teaching Hospital? A. Resident in Radiotherapy.

Q. Doctor, how long have you been a Resident Radiotherapist? A. One year and three months.

Q. Radiotherapist, that's not the proper designation, is it? A. That's right.

Q. It is right? A. Uh-huh.

Q. And how long have you been? A. One year and three months.

Q. Doctor, what did you do prior to coming to the Shands Teaching Hospital? [4] A. I was in the service for three years.

Q. Would you state where and what your duties were during those three years? A. Two years at Tyndall Air Force Base as a Flight Surgeon and one year in Viet Nam as a Flight Surgeon.

Q. Now, would you state between what periods of time you were stationed at Tyndall Air Force Base? A. That would be July of, I guess, '65 to March 4th of '66. What would that be—'66, I guess, '67. Then I was there for another three months, March of '69 to July of '69—March '68.

Q. March of '68? A. March of '68 to July of '68.

Q. All right. Doctor, where did you receive your medical training? A. University of Florida here, Shands Teaching Hospital.

Q. And would you state when you graduated from Medical School? A. '64.

Q. I take it that upon graduation you went immediately into the Air Force. A. A year of internship.

Q. Where was that? [5] A. Church-Hillman Hospital in Baltimore.

Q. Doctor, you are a physician, of course; are you licensed to practice in the State of Florida? A. Yes.

Q. Are you a member of any Boards or do you have any specialty? A. No specialty.

Q. Do you have any special honorariums or memberships in medical societies? A. AOA.

Q. What is that? A. That's an honorary medical society.

Q. Would you state what that is, what the initials stand for? A. Alpha Omega Alpha. And I'm an honorary member of the American Medical Association as long as I'm a resident.

Q. All right. Are you still in the Air Force by way of the Reserve? A. No, sir.

Q. You are not? A. Discharged.

Q. Doctor, have you received certain copies of documents that were mailed to you by me? [6] A. Yes, I have.

Q. The same being records of Lieutenant Charles L. Swarn, these being medical records, while he was stationed at Tyndall Air Force Base? A. Right. I have them here.

Q. Have you had an opportunity to examine them? A. Yes.

Q. Doctor, independent of those records, do you have a recollection of Charles L. Swarn? A. No.

Q. Do these records refresh your recollection as to this individual and the complaint which he had? A. I remember having seen him, right.

Q. You say that independent of these records, you do not have any recollection? A. No. Until I went over the records, I could not remember who he was.

Q. Would you state from the records, the date, if you

can, of your first consultation with Lieutenant Swarn? A. Let's see. It looks like 30 November of '66.

Q. Now, would you take a look down in the lower left hand corner of the document that you're looking at, and you will notice that there's a number followed by a little 'c'. Would you state what that number is? [7] A. Down here?

Q. Just written in. It looks like a 10-c. A. 10-c.

Q. That is the first consultation? A. That's the first one that I have a note of, right. I'm pretty sure that is the first time I saw him, according to the laboratory data here too.

Q. Now, would you state if you recall the circumstances under which Lieutenant Swarn consulted with you; that is, where you were and what his complaint was initially on this consultation? A. I was at Tyndall Air Force Base, Flight Surgeon's office. We take care of all the officers and their problems. He was seen on sick call up there and he had been seen previously at another dispensary at which time they found red blood cells and albumin in his urine, and he was told to report in at his next base for evaluation of this problem, which he came to see us on sick call.

Q. All right. Do you recall if at any time during any of the visits, either this one or any subsequent visit, if there were such, if anyone was with Lieutenant Swarn? A. No one that I recall.

Q. Would you recall if his wife had accompanied him? A. I would think so. Most of the time, the patient's [8] family never comes back into the room with us. They might have been sitting in the waiting room but I don't recall her being there.

Q. All right. Were you able to arrive at any diagnosis as the result of this initial consult with Lieutenant Swarn on November 30th? A. Yes. I made a diagnosis of glomerulonephritis and at that time referred him to the Medicine Department requesting a kidney biopsy because

I felt this was the only way we would prove the diagnosis. Unfortunately, though, they didn't get the biopsy at that time.

Q. Now, this would have been following the 30 November '66 consult? A. Well, I saw him 30 November. Then the 14th of December and the 21st of December.

And the 21st of December, we had all the results back and I requested then an internal medicine consult for kidney biopsy.

Q. Doctor, were you able as the result of these three visits that you just enumerated to arrive at, so far as you were concerned, a conclusive diagnosis of glomerulonephritis? A. As far as I was concerned I did, because he had a high ASO titer, which is fairly selective.

[9] Q. Would you state what that is? A. It's an anti-streptolysin O titer, which is defined in patients with acute or chronic glomerulonephritis. And we didn't have the facilities for obtaining an Addis count or getting good—or checking for casts.

Q. Casts? A. Casts in the urine. But we had one fellow up there who I remember was fairly good and he picked up casts in his urine.

Q. Are you referring now to another document in those papers that I forwarded to you? A. Well, we have here, you have some casts, of which is not really—the amount in the urine sample isn't indicative. This is in another document, regular laboratory data. He only had two to three course casts. But at the time he had these casts, he also had 4-plus albuminuria, which goes along with glomerulonephritis.

Q. What is considered normal? You say 4-plus— A. Normal is zero.

Q. And one would be, how would you grade the albuminuria? A. It's graded according to one, two, three and four. Four is maximum.

Q. Now, would you state again by what point in time [10] these casts had been noted and the positive diagnosis of glomerulonephritis had been made? A. Well, the casts

and the albumin in the urine were noted on the 30th of November, 1966.

I don't see the ASO titer. Oh, here it is. That was also dated—the blood sample was collected on the 30th of November, but the report came back the 7th of December.

Q. So, would that indicate to you that the positive diagnosis was made as of the 7th? A. Well, I have the written note down here that I stated on that paper that it was the 21st. I decided that he had—and that would be the first time I saw him, I guess, after everything came back.

Q. The 31st of December? A. Yes, of '66.

Q. And what document are you referring to there? Can you see the number in the lower left hand corner? A. That is the one that is marked 10-c.

Q. 10-c again. Will you show me? A. Right there. (Indicating on document.)

Q. On the document that is marked 10-c in the lower left hand corner and opposite the date 21 December, 1966, would you state in long-hand what is written here? [11] A. I have down here, "the patient remains asymptomatic. Physical examination is within normal limits. Diagnosis: glomerulonephritis. Sent to Medicine for biopsy to prove diagnosis."

Q. Now, was any of this information kept from Lieutenant Swarn? A. No.

Q. When was he told of the diagnosis, if you know? A. I'm sure I talked with him. I generally tell all my patients what they have and what I think they have when I see them and talk with them. And I'm sure I talked with him at that time and told him that I wanted to get a biopsy to prove his diagnosis.

I didn't write it down, you know. But, otherwise, I wouldn't have been able to get a kidney biopsy. He wanted to know why did I want it.

Q. Now, do your records reveal when the kidney biopsy was taken? A. There wasn't one done at Tyndall. But the records, going through the records, he did have one—let's see—it has here that it was done 3-17-67.

Q. That would be March 17, 1967? A. And that was done in Syracuse.

Q. Doctor, going back, would you state, if you can, [12] the total number of consultations that you had with Lieutenant Swarn as appearing from these records? A. Let's see—

Q. And the dates, if you would. A. I had four consultations: 30th of November, the 1st of December, 14th of December and the 21st of December, all in 1966.

Q. How many is that total? A. Four.

Q. Four total and during this period of time, was he referred to other sections of the Medical Installation at Tyndall for examinations and cultures and so forth? A. Yes.

Q. Would you state to the best of your ability and knowledge approximately how many specimen, either blood or urine—upon how many occasions he had samples of blood or urine or some other thing taken? A. On the 30th of November, he had urine and blood. On the 14th of December, he had an IVP.

Q. Would you say what that is? A. Intravenous pyelogram. On the 21st of December, he had a flat plate of the abdomen. On the 1st of December, a chest X-ray. 14th of December, a urinalysis and also blood work.

[13] I guess that's all.

Q. Doctor, when you consulted with or treated Lieutenant Swarn, were you alone or were you with another doctor, or do you recall? A. Alone.

Q. Would you be able to state what Lieutenant Swarn's physical complaints were, let's say, by the 21st of December? A. The only physical complaints that he had when I saw him was he actually felt healthy, didn't feel sick, but he was having red blood cells and proteinuria. He noticed, I know he noticed the red blood cells in his urine urethrally and this was all. Otherwise, he was asymptomatic.

Q. You say he noticed the red blood cells in his urine. Did he notice the discoloration? A. The urine was smoky, right.

Q. How would he notice the proteinuria? A. Well, he wouldn't notice the proteinuria except that there is some burning with proteinuria, that's the only thing, in some patients. He would have had to have been told that he had proteinuria.

Q. So, from his point of view physically, he had smoky colored urine and burning sensation upon urination? [14]

A. That would be all he'd have. Other than that, he was asymptomatic and was just having us follow him because he was previously told to come to see us.

Q. With the reports that you received from the laboratories, was there any other, let's say, by the 30th of November of 1966—I'm referring now specifically to page 16-c—would there be any other possible diagnosis in your opinion other than glomerulonephritis? A. Well, if you just looked at these lab reports here with the proteinuria and the few casts that are present, there would be the possibility of chronic pyelonephritis. That would be the only thing. But I wouldn't have really entertained it, because as I remember—well, you don't have anything in here on a urine culture, but that would be the only thing that you could say, that I would consider.

Mr. Thorup: Excuse me. Off the record.

(Discussion off the record.)

Mr. Thorup: Let's go back on the record.

By Mr. Thorup:

Q. Doctor, would you please leaf through those documents from the numbered pages 1-c and just put your initials on the back of any page which contains a written memorandum made by you or a lab report issued as a result [15] of your request. A. There is one other diagnosis for it, which should be lupus.

Q. L-U-P-U-S? A. Right. Lupus erythematosus.

Q. So, as I understand it, there were three possible diagnoses as of the 30th of November, and they were chronic glomerulonephritis, pyelonephritis and Lupus—that other

word that I can't even pronounce. A. Erythematosis. Those are the three you could consider. Let's see now. If you're just looking at this thing here, the first two lab items on the 30th of November, you could also consider infection as well.

Q. By the time he left your treatment—in other words, by the time your consultation and treatment of him was terminated, had you arrived at any definite diagnosis of chronic glomerulonephritis? A. Before he left?

Q. Yes. A. I had. But I would have liked the kidney biopsy, though, at the time, but I felt this was what he had was glomerulonephritis.

Q. And you're certain that he was aware of this diagnosis that you made? [16] A. Yes.

Mr. Thorup: Miss Reporter, I'm going to ask you now to mark these as Defendant's Exhibits 2A through H.

(Above described documents received and marked as Defendant's 2A through H.)

Mr. Thorup: I don't believe I have anything more.

Cross Examination

By Mr. O'Malley:

Q. Doctor, when did you tell us you graduated from Medical School? A. 1964.

Q. And then you completed about a year of internship; is that correct? A. About a year of internship.

Q. And shortly after that, you went into the service? A. Right.

Q. And the first time you saw Lieutenant Swarn was in 1966, was it? A. 1966, right.

Q. So that that paper you had indicated on March 17th of 1967 added no influence on any diagnosis [17] that you made in 1966, did it? A. No.

Q. Do you remember what Lieutenant Swarn looked like? A. If I remember him, he was a thin colored male and I think he had glasses, but I won't swear to that.

Q. Do you remember verbatim anything that he said to you, say, in his visit of November 30th, 1966? A. Well,

the only thing I remember of him is, one of the reasons I remember is, because he was interesting, and we hadn't seen too many interesting patients up until then, was that he was having problems with red blood cells and albuminuria of the urine and he was referred here because he was coming TDY to Tyndall, so he was referred for us to look at.

The interesting thing was that nobody had done any real workup on him previous to coming to us.

Q. You say us, were you working with other men at the time or under anybody in particular? A. Under no one really in particular but there were three other doctors in the office there at the time.

Q. And, really, at that time and outside of supervision when you were an intern, you hadn't seen many patients on your own, had you? [18] A. Well, I would say in my internship, I probably saw well over 2,000 patients.

Q. Was that under supervision or by yourself? A. Yes, I was under supervision internship as well as you see patients in medical school too.

Q. What was the significance of bringing Lieutenant Swarn back the next day after your initial visit of November 30th? A. Well, what this is for is for us to see him after we get the initial lab reports.

Q. And on the second day, he had examinations of the chest, didn't he? A. Right.

Q. What relevancy did this have? Was that persuasive of any of your earlier diagnoses or was there anything complicated about the tests or what? A. No.

Q. No, what? A. No relevancy to the earlier diagnoses.

Q. I believe as late as December 14th, you have a description in your report that Lieutenant Swarn was asymptomatic? A. Right. On the 21st, he was still asymptomatic.

Q. And that is the last you saw him? [19] A. That's the last I saw him.

Q. Do you recall any specific conversation you had with him on any of these four dates that you saw him? A. No. The only conversation that is at all familiar with me would

be the explaining to him why I wanted a kidney biopsy and that he was going to Medicine and the reason for this.

Q. Do you recall specifically whether you told him or do you just generalize since you told all of your patients that you must have told him something? A. No. Specifically I would tell him that we need the kidney biopsy in order to evaluate what I thought was wrong with him.

Q. Did you tell him it was just a thought on your part? A. No.

Q. What did you tell him, if you remember? A. Well, that would be conjecture, seeing that it was three years ago that I couldn't say specifically that I said that he had glomerulonephritis. But knowing how I treat other patients, I would say I told him that I thought he had this.

Q. What specifically is glomerulonephritis? A. It's thought to be an antibiotic reaction within [20] the kidneys secondary to infections with a type of streptococcal infection. And you get these infections with the streptococcal infection which may be skin infections or throat infections and this sensitizes the kidneys in some manner in which repeated infections will precipitate chronic glomerulonephritis and destroy the kidneys.

You could have essentially an early attack, but when you have acute glomerulonephritis in which you have changes in the glomeruli of the kidneys, the kidneys, don't clear the urine from the body properly and they get hypertensive, edematous. And you can take them through this phase, even though you do lose some of them in this phase, and some will never have any more problems after this. And others, a small percentage, go on into what is called chronic glomerulonephritis in which the kidneys continue showing an insult from this and these patients generally end up with hypertension and decreased urine function and die fairly early.

Q. Well, that's why you need a biopsy of the kidneys to determine the extent of the damage, don't you? A. Right.

Q. And you never got that in this case? A. No. I requested it from Internal Medicine but [21] at the time they didn't get the kidney biopsy.

Q. So you really didn't know on December 21st of 1966 whether this was mild or chronic? A. Well, you would more or less know that it's not the acute phase because most of these patients in the acute phase develop hypertension and edema. But you couldn't say specifically that this was not, you know, just following the acute phase.

Q. What is the acute phase? A. Well, the acute phase, most of these patients have hemoglobinuria with hypertension, edema, and the kidneys just don't function properly at all.

In the chronic phase is where they go into almost completely asymptomatic like you or I. The only difference is that they have red blood cells and albuminuria in their urine constantly and the kidneys show gradual progressive damage, and they get hypertensive.

Q. In this case, you didn't know whether he had kidney damage or not, did you? A. Well, with what I thought he had, I would say that he had kidney damage but I couldn't say how much.

Q. What treatment did you prescribe or did you give him? A. We placed him on Terramycin and Furadantin [22] prophylactically. And I requested a urine culture, I noticed here, on the first of December, which I don't see the report in here.

Q. Do you infer from that that you didn't get a report back or that it was negative? A. No. I would say it was probably lost some place along the line.

Q. Well, did you have any manifestation of urine specimen after November 30, 1966? A. Well, we have one more in here that was 14 December '66.

Q. What did that show? A. It showed a normal specific gravity. So his kidneys were still functioning adequately.

His specific gravity was one-point-O-one-eighty (1.0180).

The sugar was negative. We requested albumin and they didn't obtain it.

He showed eight to twelve WBC's and three to six RBC's at that time.

Q. What did that indicate to you? A. That the urine was more normal by this report.

Q. It says, "Condition has improved in this fourteen days." [23] A. Well, I wouldn't say you could say improved at least not from these studies in that urethritic glomerulonephritis they change, you know, day to day and week to week, they will change the urine, they will decrease the amount of albuminuria and decrease the amount of red blood cells.

As well as you always have to—can I say it off the record or should I say it on the record?

Mr. Thorup: Try it off first and see how it comes out.

(Discussion off the record.)

Mr. Thorup: Do you want to put that on the record?

Mr. O'Malley: Yes.

Mr. Thorup: Mr. O'Malley wants it on. Why don't you repeat that?

The Witness: Well, you couldn't always trust some of the laboratory data that you get because some of the technicians they had were not specifically trained for the type of work they did.

By Mr. O'Malley:

Q. With the observations that you have made on the four visits and with the laboratory information that was [24] accessible to you at the time, it would indicate that there was an improvement in the condition of Lieutenant Swarn, would it not? A. No. I see just from going through this data I would say that his status was essentially the same all the way through.

When I first saw him on the 30th of November—I only saw him for a very short period of time, I guess about twenty-two days was the only contact I had with him. And he was asymptomatic from the beginning of that to the end of that.

So the only improvement that he showed or change would have been in the urine. And, unfortunately, one of the most important things was left out, which would be the albuminuria; that is it's more selective than the others. He did have a decrease in the red blood cells, which would mean something.

Q. So your three biggest criteria, the albumin and the urine tests and the biopsy were absent on December 21, 1966? A. The albumin wasn't obtained on December 14th, right.

The biopsy which I requested on the 21st was not obtained either.

[25] Q. So with that dearth of information, your diagnosis on December 21st, 1966 at best left a great deal to be desired, did it not? A. Well, it wouldn't to me, really. I would still make the diagnosis of glomerulonephritis. The only thing is you would need the kidney biopsy to say you are absolutely right.

Q. And as regard these specifics of what you told Lieutenant Swarn, you don't recall what they were? A. No, I couldn't specifically recall a conversation.

Q. Or even generally with what you would have told patients, it would be difficult at this time for you to be able to testify as to how much he comprehended of what you told him; is that correct? A. As to what he comprehended? Well, I don't know. I probably would have to take issue with that, actually, in that I would think that he would, if I told him that he had a kidney disease that he would understand that he had one. I have to explain to them why we want the kidney biopsy and that this is to substantiate the diagnosis and the treatment that follows.

Q. And you told him that the diagnosis was an impression of a doctor as to what the symptoms actually indicate the underlying disease to be, didn't you? [26] A. I told him that I thought it was glomerulonephritis. (see 15, 16 and 19)

Q. You told him that was the impression of a doctor? A. Impression, right. This is my diagnosis.

Q. And throughout that time, again, he appeared asymptomatic? A. Well, always asymptomatic when I saw him, right.

Q. And when a person is asymptomatic, isn't it sometimes difficult for a doctor to persuade him that he is sick? A. True.

Mr. O'Malley: That's all.

Redirect Examination

By Mr. Thorup:

Q. Doctor, the word asymptomatic to me is incompatible with the presence of chronic glomerulonephritis. Would you explain how a person could be asymptomatic and yet have or be suffering from chronic glomerulonephritis? A. Well, the patients with chronic glomerulonephritis, they can have hypertension, which most of them have, and most of them don't even know they have it. They tolerate it—the body adjusts to tolerate it.

The albuminuria which they have, most of these, why the little bit of burning that they get with this is [27] not enough to even be noticeable or bothered with at that time.

And, until the kidneys actually quit functioning, concentrating the urine, they generally feel fairly good except maybe a little bit tired.

Q. So when you say asymptomatic, you mean from the patient's—this is a degree of physical wellbeing of the patient, is that it? A. This would be from the patient's point of view that he just doesn't feel bad.

Q. So when you say asymptomatic, that means that he had no specific complaints such as open wound or horrible headache or anything of this sort. A. Right. This would be his description.

Q. Now, referring to page 17-c, I noticed that an IVP, an intravenous pyelogram was done. Would you explain what is involved in the running of an intravenous pyelogram? A. Well, for an intravenous pyelogram, you inject dye which is excreted by the kidney into the blood stream and then the dye is concentrated by the kidney and excreted through the bladder and you take X-rays of these at various time intervals in the hopes that this will show an abnormality in the kidneys.

[28] Q. And this was done on 14 December '66? A. Right.

Q. Was this done at your direction? A. Right.

Q. And does this involve the insertion of a needle into the body? A. Into the vein. Into the arm.

Q. Is it a relatively simple procedure or is hospitalization required for an IVP? A. No hospitalization required. Just have to come in as an outpatient. It takes only a few minutes to inject the dye and probably a half hour to have the series completed.

Q. And when were the X-rays taken? A. The X-rays were taken, they generally take one just prior to the administration of the dye and then depending on where the facility is and who the radiologist is, you take the next one in either five, ten, fifteen, thirty minutes sequence, or they vary that sequence.

Q. Doctor, I noticed on the 21st of December, 1966 your record is on page 7-c, is this one of your entries opposite the date of December 21st? A. On 10-c?

Q. On 7-c. I'm sorry. [29] A. 7-c. The consultation is.

Q. And did you write the report following "intriguing Rx"? A. No. This would be by the internist who saw him.

Q. I see. Do you recall who that was? A. Let me think. Right now, I can't think of his name.

Q. But this was a Doctor of Internal Medicine? A. John Willis.

Q. John Willis? W-I-L-L-I-S? A. Right.

Q. Was he also in the Air Force? A. He was in the Air Force. Still in the Air Force.

Q. Do you know where he is now? A. He is stationed in England.

Q. That's John Willis and he's still in the Air Force and he is stationed in England as far as you know? A. Right. Board qualified Internal Medicine. I don't think he is Board certified yet.

Q. Now, you made this statement a little while ago in response to Mr. O'Malley's question that some of these lab technicians were not quite fully trained. In any [30] of these records or reports, lab reports, do you see any evidence of any reports by untrained lab technicians?

I take it you were speaking generally when you said the

lab technicians are sometimes untrained? A. Generally, right.

Q. Would you state whether or not in your opinion the lab technicians who submitted the reports that we have been talking about here today were or were not sufficiently trained to make accurate reports? A. Well, I don't recognize the name on the second urinalysis. But the first urinalysis was run by one of the better men there.

Q. And what page is that on? A. That's on 16-c.

Q. Page 16-c. So the report found on page 16-c is returned by a person who you considered competent in the field? A. Uh-huh.

Q. And did you initial the back of that page, Doctor? A. Yes. I can't say on that last one. I don't remember that fellow now. If I saw him, I would.

Q. Which one would that be? A. That would be on 20-c.

[31] Q. 20-c? A. I can't help you on that. I can't say. The ones I remember who were not too good, I'd have to see them to be sure. So this probably might have been perfectly okay.

Q. Well, is your diagnosis based in any part upon a report made by a person whose qualifications you are not sure of? A. No. The biggest thing for the diagnosis is the elevated ASO titer which came from the medical laboratory.

Q. Which you considered to be accurate in all respects? A. Yes. This is where they send off all of their data.

Q. And, doctor, it's possible to make a diagnosis of chronic glomerulonephritis without the albumin count and the kidney biopsy, is it not? A. You can, right. When you make it, you'd go more with the ASO titer. This is fairly selective in this disease.

Q. So in your mind, was there any question but that Lieutenant Swarn was suffering from a condition known as chronic glomerulonephritis upon the occasion of [32] his visits to you? A. Well, I couldn't say he had chronic, but I would say that he had glomerulonephritis and it was probably some time after the acute episode.

Q. And further that he was aware of the fact that he was suffering from a condition known as glomerulonephritis?

Mr. O'Malley: I object to the question. But you can answer.

By Mr. Thorup:

Q. Is that true? A. Well, I would say I'd told him that he had glomerulonephritis. Now, as he said, I can't be sure that he comprehends, but I would say that he knew he had glomerulonephritis and a kidney disease.

Mr. Thorup: That's all.

Recross Examination

By Mr. O'Malley:

Q. When did you get that, what was it, ASO? A. ASO. Well, it was stamped 7 December '66, which I think was from the medical thing.

Then we got another stamp on here, another stamp of 2 December '66.

So I'm not sure which stamp that was.

[33] Q. What happened to this man on December 21st, the last time you saw him? Did you discharge him? A. No. I sent him to the Internist.

Q. Doctor Willis? A. Doctor Willis. And then—the only thing that I can see happened to him was that he went back to his base and was TDY because he never came back. I don't have any other record.

Q. Where was his base? You mean in New York? A. No. I don't know where he came from originally. It might have been—I'm not sure where he would have come from.

Q. December 21st, 1966 was the last association the Lieutenant had with Tyndall Air Force Base? A. Right. That I can find in here, right.

Mr. O'Malley: That's all I have.

Redirect Examination

By Mr. Thorup:

Q. Is it possible, Doctor, that there are other records and that he saw doctors other than you at Tyndall before he went back to Hancock Air Force Base?

Mr. O'Malley: I object to "is it possible," but you can answer.

The Witness: Well, it's always possible [34] in the Air Force, but I can't say.

Say he came in the emergency room and they didn't have his original records, they'd make up a single sheet and send it to his original base.

By Mr. Thorup:

Q. Doctor, as of December 21st, had you released him from your care? A. No. All I did was send him to Internal Medicine and he just never came back. So that is the only thing I have.

Q. So he was never told by you, as far as you know, that he was released? A. No.

Q. From your medical care? A. (Shakes head.) See, we had so many though, while I was there that you see TDY, you know, they come in, some of them with complaints that need to be followed and they come in a few times and you see them and you will do the workup and they will go and you just forward all of their records to the next base and hope somebody picks them up.

Mr. Thorup: Doctor, you have the alternative of being able to review after Mrs. Tullis has [35] transcribed your testimony of—she would send it to you if you would make whatever changes, corrections, you feel should be made—you have this right if you so desire to do it. Or you may waive your signature to the transcript, as to which I would have no objection.

Mr. O'Malley: I would have no objection.

The Witness: All right. I don't care to read it.

(And thus the deposition was concluded.)

TRANSCRIPT OF PROCEEDINGS.

FEBRUARY 13, 1970

[10] The Court: Mr. O'Malley.

Mr. O'Malley: Your Honor, in that it is an initial question that I don't think we need to go into immediately, I think you will have to decide as to what is germane and what is not. And Mr. Thorup takes issue as to my statement, with my statement that what is at issue here ends on January 19th.

I would invite the Court's attention to Horn's (phonetic sp.) advance on insurance, Page 378, where it has a large title "WHEN DUTY TO DISCLOSE TERMINATES" and it says:

"The duty of disclosure ends with the completion of a contract. The insured need not disclose facts learned after the making of a contract, even though the policy issues subsequently."

which is our case. And in regards to the ability that they could have of terminating the contract, they could have done that, Your Honor, in a case for revision but not in a case of fraud when a person has actually died and then they come in to set aside. [11] As the pre-trial statement indicates, the only basis alleged for setting aside this contract is fraud, in that there was a misrepresentation, but not a failure to disclose.

Mr. Thorup: Your Honor, this contract did not become a contract until it was received by the insured, and in this case the evidence will show that it was received on March 2nd. Now, whether it became effective March 1st, in accordance with this provision or whether it was received, is another question. But we will show that on March 1st and on March 2nd, the defendant was in hospital and had been in the hospital since the 23rd of February.

The Court: Let me understand you. The date of this application was January '67? That was the date of the contract?

Mr. O'Malley: The date of the contract is when they say the contract was issued. In the pre-trial statement they say, January 19, 1967. We say there was a contract then and that terminates misrepresentations alleged.

The Court: It says on January 19, 1967, the defendant issued the policy to the decedent, effective March 1st.

Mr. O'Malley: Yes, Your Honor, but as my authority shows, the effective date is immaterial. Policy was issued and the contract was binding on January 19th. Your Honor, there are two depositions in this case of Dr. Foreman and Dr. Jones and for purposes of my case and before putting on my first witness, who will be a doctor, I would like to introduce certain statements [12] of both depositions. Would you prefer me to name the page or the passage, or to read into the record the testimony?

The Court: Which is the first one?

Mr. O'Malley: Dr. Foreman.

Mr. Thorup: Your Honor, in that connection, I will be happy to take part of the doctor's depositions too. Course I am interested in having the depositions in as well.

Mr. O'Malley: I don't want the whole part in, I'm going to object to some portions.

The Court: Have you gentlemen agreed to what portions you wish to have in so that we can move along?

Mr. Thorup: He had certain objections. Now, if I took the part of the doctor, he could object wherever he wanted to.

Mr. O'Malley: I don't think he has any objections to any of it going in.

Mr. Thorup: That's correct.

Mr. O'Malley: So I will put in the parts that I want in and then I will make a proffer and make my objections.

The Court: Suppose for this purpose we read into the record what you have in mind.

Mr. O'Malley: There are certain pages that I want in. I want Dr. Foreman's deposition. I want Page 5, Page 6, Page 7, Page 9, the last two lines on Page 13 and on Page

14, where Mr. O'Malley says, "The question is, does he have an opinion as to [13] what his condition was then?"

The Court: What part of Page 14?

Mr. O'Malley: About quarter of the way down, and then down to the answer, "On four occasions," to include that answer.

The Court: Going over to Page 15?

Mr. O'Malley: No sir, to the answer, "On four occasions."

The Court: Beginning with the question you propounded?

Mr. O'Malley: Yes sir. Page 19. "When did you complete your internship?" Answer: "In June of 1965." I would offer all of Page 21, all of Page 22 and Page 23 down to, and not including the Redirect Examination by Mr. Thorup. Page 24, beginning with the second answer and the words, "The record indicates . . ." and the remainder of Page 24. Page 25, the first answer, "I can't recall exactly what was told to him with regard to his laboratory findings." I would like that in too. And beginning with the answer after the second O'Malley. The answer was: "Well, he was probably told there were abnormal findings in the urine. Exactly what the findings were, I don't think that was related." And the remainder of that page, I would offer into evidence.

The Court: Beginning with the answer, "Well, he was probably . . ." and the remainder of the page?

Mr. O'Malley: Yes sir. And with regard to Dr. Jones' deposition, Page 4, Line 18 to Line 20. Page 6, Line 8 to Line 10 and Line 18 to Line 20. Line 22 to the end of the Page. Page [14] 11, Line 1 through 4. Page 12, Line 4 through 8 and Line 14 to the end of the page. Page 13, Line 6 through Line 14, ending with the word, "asymptomatic" and the remainder of that page.

The Court: From 6 to the conclusion?

Mr. O'Malley: Yes sir. Page 14, Line 1 through 4. Page 17, Lines 3 through 15. Page 15, Lines 11 through 16, also Lines 20 to the end of the page. Page 22, Lines 5 to the

end of the page. Page 24, Lines 5 to the end of the page. Page 25, beginning with Line 8, Question and ending with Line 11.

The Court: Line 8 to 11?

Mr. O'Malley: Yes sir. Page 26, Line 5 through Line 11 and also Line 15 to the end of the page. And Page 27, Line 1 through Line 15. Page 34, Line 16 through Line 22. With that I would be prepared to put my doctor witness on the stand if it is convenient.

The Court: Is your doctor here now?

Mr. O'Malley: Yes, Your Honor.

The Court: I would like to have the benefit of this in my mind before I hear the doctor. Mr. Thorup, your witness is leaving this afternoon, is that correct?

Mr. Thorup: He is leaving the city tomorrow, Your Honor. One other possibility would be to take his deposition this evening, Your Honor, and have a transcript made of it over the weekend.

[15] The Court: Mr. O'Malley, do you have any idea of how long it would take you to read these portions of the deposition into the record? I was thinking if we could do it before the luncheon recess.

Mr. O'Malley: I would imagine it would take about 25 minutes. Your Honor, I may be able to read hurriedly since the reporter would have the benefit of the transcripts before her, so I may be able to go a little faster. It'd probably take about 20 minutes. The deposition of Dr. Foreman, Your Honor.

The Court: That would be Page 5.

The Court: The Clerk has just called to my attention, has anyone requested a rule on witnesses?

Mr. O'Malley: No, Your Honor.

The Court: There is no problem as to that then?

Mr. Thorup: No, Your Honor. Your Honor, I don't know if Mr. O'Malley has indicated, but I would move for the admission for all those parts except the portions which Mr. O'Malley has objection to, without waiving the other

portions he has not submitted. Why don't we do both the depositions as I would move for the admission of all of them?

* * * * *

[18] Whereupon,

Dr. Daniel Hayes,

was called as a witness, first having been duly sworn, testified as follows:

Direct Examination

By Mr. O'Malley:

Q. State your name, please. A. Daniel Hayes.

Q. Where do you live? A. Bethesda, Maryland.

Q. Will you keep your voice up? How do you spell your name? H-a-y-s? A. H-a-y-e-s.

Q. Your first name's Daniel. And how are you employed as a doctor? A. I am a specialist in urology and general urinary surgery.

Q. Where? A. In Bethesda, Maryland. At the Bethesda Medical Building at 8281 Wisconsin Avenue, Bethesda, Maryland.

Q. And are you in private practice, doctor? A. Yes, I am.

Q. And how long have you specialized in urology? A. Nine years.

Q. Can you tell us what your training background was with [19] regards to your specialty? A. I was a graduate of Georgetown University School of Medicine. I interned at Marcy Hospital in Buffalo, New York, and I had four years residency in urology at Georgetown University Hospital.

Q. Were there special boards with regard to your urology? A. Yes.

Q. And when did you qualify or pass those boards? A. I was certified by the Board of Urologists on February 19, 1969.

The Court: On February 19, 1969?

The Witness: Yes.

By Mr. O'Malley:

Q. Dr. Hayes, have you been in the military service? A. Yes, I have.

Q. When? A. From July of 1955 to July of 1957.

Q. Where? A. I was a general Medical Officer at the United States Naval Hospital at the Marine Corps Base, Quantico, Virginia, and a general Medical Officer aboard the transport, George M. Branule (phonetic sp.)

Q. And what were your particular duties in both of those assignments? A. The practice of general medicine, no specialty involved.

[20] Q. And can you tell us generally what that involved—generally the patients came to visit you, did they? A. Yes. Care of the sick and injured and certain functions in terms of sanitation and hygiene of the ship, not so much of the hospital.

Q. While in the service, did you have occasion to give service physical examinations? A. Yes.

Q. Are you familiar with the terminology, service physical examination, as such? A. Essentially.

Q. Can you define for us what a service physical examination is? A. It is a routine questioning of a given individual in determining any illnesses which he may feel he has, followed by a review of the systems or the general question of all body systems, seeking to elicit illness, followed by a general physical examination of the systems.

Q. Assuming, doctor, that a 24-year old lieutenant in the Armed Services visited a doctor on October 13th of 1966, and at the time complained of frequency of urination and possibly discoloration of urination. Assuming further, that a urinalysis was taken on that visit, would you describe that as a service physical examination? A. If it was simply confined to those symptoms, no.

[21] Q. Assuming that the doctor told him to return again on October 26, at which time there was another ex-

amination and another urinalysis; assuming that he told him to return again on November 7th for an examination, would any one of those individual appointments, or the three of them combined, amount to a service physical examination? A. No.

Q. Do you know the procedure when service men change from one base of operation to another—A change of duty assignment—Do you know whether a physical examination is required as a part of that? A. I believe there is.

Q. Do you know whether it is substantial or cursory? A. In my memory it is cursory.

Q. Assuming a person was transferred from a base in New York to a base in Florida and was ordered at that time to go on sick call by a doctor and assumed further that he went on sick call on November 30, 1966, at which time a urinalysis was taken and, I believe, a twenty, three minute visit, would that constitute a service physical examination? A. No.

Q. Assume further that he was told to return the next day, December 1st, and he had a chest X-ray examination, would that be considered service physical examination? A. No.

[22] Q. Assume further that he was directed further after the December 1st visit to return to that doctor on December 14, at which time an IVP examination was taken, and also a urinalysis and blood work were performed—this I will ask you parenthetically; what is an IVP in that context? A. It is an intravenous pyelogram. It is an X-ray of the interior of the kidneys.

Q. Assuming that those things were done on that visit, would that constitute a service physical examination? A. No.

Q. Assume further that he was ordered to return to that same doctor on December 21, 1966, at which time a flat plate of the abdomen was taken, would that constitute a service physical examination? A. No.

Q. Would those four visits, which I have enumerated for you on November 30th through December 21st, taken to-

gether constitute a service physical examination in your opinion? A. No.

Q. Would those four visits, coupled with the visits we have already enumerated which occurred on October 13th, October 26 and November 7, 1966, constitute a service physical examination? A. No.

Q. Now doctor, when servicemen have occasion to seek medical treatment in the service from service physicians, such [23] as yourself, is there a general terminology for a description of that visit? A. Sick call, as well as anything else.

Q. Doctor, are you familiar with the description in medicine, asymptomatic? Am I pronouncing it right? A. Yes.

Q. Would you give us the definition of asymptomatic? A. It is a two part definition. The first part, the patient does not present with any change in his general sense of well-being; no symptoms of illness. The second part is, the physician, by questioning, is not able to elicit anything that the patient would be typically aware of.

Q. Does the first part of your definition apply to the understanding or comprehension that the patient himself has in his own mind as to whether or not he has anything which may be called symptoms, is that correct? A. Yes, that's correct.

Q. And when he is asymptomatic in his own mind, he has none of those symptoms to indicate sickness? A. That's correct.

Q. Doctor, are you familiar with the medical description, capital A-S-Q? A. Yes.

Q. Titer, and is it spelled t-i-t-e-r? A. Or t-i-t-r-e, or t-i-t-e-r.

[24] Q. Will you tell us what that is? A. It is a laboratory measurement of the serum of a blood of a substance produced by the body in response to a streptococcus germ and it is called an antistreptomycin "O".

Q. How is the ASO titre measured? A. In humans it's called the Todd units. It's generally exact.

Q. Assuming you had one abnormal ASO titre on the

four physical examinations that I referred you to, would that be medically significant with regards to a medical diagnosis of glomerulonephritis? A. In an isolated observation, probably not.

The Court: Doctor, what do you mean by an isolated observation?

The Witness: One isolated test, Your Honor, the significant value of that particular test. One test that did not have any followup, or further tests, would not carry too much significance.

By Mr. O'Malley:

Q. By itself, you mean with regards to observations of this ASO titre? A. I mean if you just see the one manifestation on a single visit, you say this is not significant? A. If all I had is one ASO titre measurement, I could not rely on that with much confidence. If I had several, I would.

[25] Q. Doctor, are you familiar with the expression, medical consultation? A. Yes.

Q. Were any of these visits to the doctors that I have categorized be classified as consultations in the medical sense of the word?

Mr. Thorup: Your Honor, I object to this because I do not believe the doctor is anymore qualified than anyone else to state what a consultation is, or what it isn't. I think a foundation should be made as to whether he is familiar with what is contained in these depositions.

Mr. O'Malley: I will withdraw the question. Your witness.

The Court: All right, Mr. Thorup.

Cross-Examination

By Mr. Thorup:

Q. Doctor, if you would further assume that a service man who has been in the service since at least 1964 is told by a service physician in 1966, to report to the Department of Medicine for a kidney biopsy, and is told the condition

that he has that requires the kidney biopsy; and is also told that he has glomerulonephritis. Can you assume with those basic assumptions, or can you state with any degree of probability whether or not he has been subjected to a service physical exam, as you characterize it? [26] A. Not necessarily. No, I couldn't make that assumption.

Q. Do you mean to say, doctor, in the service—urino-biopsy requires service, does it not? A. No, not surgery, such as cutting of the kidney.

Q. Can you describe that then? A. There are two ways. It involves basically the removal of a small piece of living tissue and in a majority of cases it is done by jabbing a rather large needle, about an eighth of an inch in diameter, making a puncture in the kidney. There are far fewer numbers of cases where there is an incision. I would not perform this surgery.

Q. But the question is whether or not you would feel that there had been what you would characterize as a physical examination performed by that time a service physical examination. I am sorry.

Mr. O'Malley: Your Honor, I would object on two grounds. One, on the fact that the assumption is not a fact and at evidence. For example, what he had been told in diagnosis that he had been told he had this glomerulonephritis, and when the biopsy was taken, so I would object.

Mr. Thorup: Well this is proper cross-examination. I am not trying to ask any hypothetical questions. I'm just carrying these assumptions a little further.

The Court: I will permit that question.

By Mr. Thorup:

[27] Q. Now you did not examine Lt. Swarn at any time, did you? A. No, sir.

Q. Did you read the portion or all of the depositions of Dr. Norman Jones? A. I saw an abstract of it.

Q. Do you recall what particular portions you saw? A. Statements, answers and questions relative to obtaining laboratory data on Lt. Swarn at Tyndal Air Force Base.

Dr. Jones' interpretation of the findings of the clinical diagnosis, whether or not he requested a kidney biopsy. Why he had done so, and whether he had performed it.

Q. And it is your opinion, doctor, after having that information, that he probably still had not had a service physical examination? A. Not a general physical examination.

Q. But a service physical examination had been performed, had it not? A. I did not feel that it had on the basis of the abstract I saw.

Q. Doctor, if you will further assume that the same individual had been placed on gantrisin, pyridium and furadantin and terramycin; that a rectal examination had been made on which there was found a tender prostate; that complete laboratory studies had been made, including blood count, urinalysis, urine [28] culture, blood urea nitrogen, serum preatrin (phonetic sp.), total serum proteins and albumin count; that he gave urine and blood specimens on at least four occasions; that he had been given an intravenous pyelogram. Would that change your testimony? Would you still state that he had not been given a service physical examination? A. A general physical examination.

Q. Doctor, I say service physical examination, I don't say general or specific. I say service physical examination. A. No, I don't believe he has.

Q. Well doctor, how would you characterize it? A. He had a very thorough examination of one system. The genito-urinary system.

Q. Why do you state that this is not a service physical examination? A. Well, as I answered the question earlier when it was put to me, a general physical examination is an examination of all the systems. This, to me, would not be a general service examination.

Q. Now, the key word here is general. Now if it's a general, what would that mean to you? A. A review of the systems. A general checking of the urological systems—

Q. The annual physical? A. Yes.

[29] Q. But if it says specifically, service physical examination, would these things that I have characterized to you fall within that category? A. They would not technically constitute a service physical examination. It would be more specific to say that some system was being examined.

Q. Well, doctor, this is an examination, is it not? A. Oh yes.

Q. And he was in the service, and the original question framed was to do with service personnel, doctors. It's certainly physical, is it not? A. Yes.

Q. So when you put all three together you have service physical examination, do you not? A. If it's connected with a change of duty.

Q. But that was not part of this question to you, was it? A. I believe it was.

Q. Well, what if it were not connected with change of duty or change of station? A. Well, the only time that I remember officers being brought up for a general physical, it would be for an annual physical or a biannual basis.

Q. You keep saying general physical? A. Yes.

Q. And when you hear the words, service physical examination, do you not automatically attach the word, [30] ination, do you not automatically attach the word, general to it, is that what you're trying to say? A. Yes.

Q. But you say in this case, under no circumstances could this be a service physical examination? A. In a sense of applied generalities.

Q. No, leaving out general?

Mr. O'Malley: Your Honor, he's asking an expert what his opinion is, and he's going to have to let him say what his opinion is.

The Court: I think he was attempting to answer it. Proceed, Mr. Thorup.

By Mr. Thorup:

Q. Now, in reply to Mr. O'Malley's question in regards to asymptomatic, you say that that has two parts. That was the patient's feeling of well-being, that there was noth-

ing wrong with him. And the second part you answered that it was the physician's conclusion upon failing to elicit any complaint hourly from the patient, is that correct? A. Yes, the physician might ask certain questions, looking for symptoms that could be rather subtle to the average individual in attempt to satisfy himself that the patient does not have any of these particular symptoms.

Q. Well, your answer to Mr. O'Malley's question of the definition of asymptomatic was based on what he, the patient, [31] would have told you and what you would have been able to elicit through questions? A. Yes.

Q. Would it be true what you had been able to elicit through an examination of any physical? A. That is a rather technical medical question. Symptoms that come from the patient and are expressed by him, and signs would be something that the physician mentions. For instance, if I take the blood pressure of the patient and find it to be elevated or normal, that is a finding, as opposed to a symptom.

The Court: So then if you examine the patient and find the blood pressure is high or his temperature is high and he had made no complaints to you, you would say he was asymptomatic?

The Witness: I would say he didn't have symptoms but he was ill.

By Mr. Thorup:

Q. And the patient can be asymptomatic, that is, not be able to tell you anything that is wrong with him, and you by looking at him, questioning cannot tell anything is wrong with him. He could be dying, couldn't he? A. He could be sick.

Q. He could actually be dying, couldn't he? A. To the extent that the illness could cause him to die.

Q. Now, you said that one isolated ASO titre would not [32] lead you to any particular conclusion as to whether or not the patient was suffering from glomerulonephritis or kidney disease? A. That's right.

Q. Now, what if that were combined with blood tests, urinalyses, urine cultures, and what if you were also to learn if he had a 4-plus albumin?

Mr. O'Malley: I object to that, unless we know when, in this hypothetical context they found the 4-plus albumin.

By Mr. Thorup:

Q. Well, on November 30th, 1966, he had a 4-plus albumin.

A. That would be of some significance.

Q. Would you say that a patient with those symptoms that I have described to you; would you say that it is reasonably probable that he is suffering from a kidney disease?

A. Yes.

Q. That he has abnormal red and white blood cells in his urine? A. Yes.

Q. But getting back to that first question. Are you able to state with certainty, that further physical examination from your two years in the service as a medical officer, that further physical examinations means only general service physical examinations?

Mr. O'Malley: I object to the question. He asks him as to a certainty. It's not to a certainty, it's to the doctor's [33] opinion as an expert as to what his impression is, as to that time. I think he has already answered that question.

The Court: Doctor, give us your best opinion.

Mr. Thorup: I am asking you, doctor—

The Court: Could you read back that last question?

(The Reporter: Are you able to state with certainty, that further physical examination from your two years in the service as a medical officer, that further physical examinations means only general service physical examinations?)

The Witness: I can't state that with certainty.

By Mr. Thorup:

Q. Doctor, in your opinion, if the person that I have described to you and upon which we have been making certain assumptions, were to answer the following question, yes;

and this is the question: Are you now, to the best of your knowledge and belief, in good health and free from defect or deformity? If all of the things that I have described to you and upon which we have made certain assumptions prior to or including December 31st, 1966, and on January 30th, that person answered, yes, to that question; would you state whether in your opinion that is a true or false answer.

Mr. O'Malley: Your Honor, I object to that question. That is the ultimate question of the intent of the individual. That is not a proper question to ask an expert, even though he is my expert.

[34] The Court: Repeat your question.

By Mr. Thorup:

Q. Now, doctor, we are talking about the same person about whom we've been making certain assumptions, on which we asked you certain questions, who has the symptoms that we have described, and who has had these findings made before or on December 21st, 1966. That approximately 20 days later, this same person, in answer to the question: Are you now, to your best knowledge and belief, in good health and free from defect and deformity, answer, yes. In your opinion, is that a true or false answer?

Mr. O'Malley: Your Honor, I object, as I did before, on two points. One, that it is not a question for an expert. The ultimate question of the truth and veracity of the deceased coupled with that we don't have in the assumption the various findings and the dates on which they were made, so that the doctor could have a valid assumption, so I object strenuously. That is not a question for an expert.

The Court: Mr. O'Malley, this is without a jury, and frankly I am inclined to commit the question. Mr. Thorup, would you want to give some consideration to rephrasing the question?

Mr. Thorup: Yes, Your Honor.

By Mr. Thorup:

Q. Doctor, assuming again, this person is answering the question I will pose to you. On January 10th, 1967, that this [35] person on October the 13th, 1966, had complained on sick call of frequency and pain on urination. That urinalysis and urine cultures were done. That he was placed on gantrisin, four times daily. One grain, four times daily. That on a later appearance at the doctor's office, gantrisin was continued. That on November 7th, 1966, a urinalysis was done, pyridium was prescribed. Then on November 17th, a rectal examination was made, on which was found a tender prostate. That on that same day, complete laboratory studies were made, including blood count, urinalysis, blood urea nitrogen, serum preatrin (phonetic sp.), total serum protein, albumin count and he was told to continue his treatment when he got to Florida. That on November 30th, on sick call, he was seen by another doctor. He was seen again on December 1st, December 14th and December 23rd by that doctor and the occasion of these consultations with these other doctors, he gave urine and blood samples. Two more times he was X-rayed in the chest and abdomen. He was told to report to the Department of Medicine for a kidney biopsy. He underwent an intravenous pyelogram and he was further placed on terramycin and furadantin. And he was made aware by the doctors that diagnosed his condition as being glomerulonephritis. All of this 20 days before being asked this question: "Are you now, to the best of your knowledge and belief, in good health and free from defect or deformity." If the answer to that question were written in the affirmative, would you state whether or not, in your opinion, would be true [36] or false answer.

Mr. O'Malley: I object on the same two grounds, Your Honor.

The Court: You may answer the question, doctor.

The Witness: You say that he was informed?

By Mr. Thorup:

Q. Yes. A. Well, I would say it was not true.

Mr. Thorup: Thank you.

The Court: Doctor, you may be excused.

(Witness excused.)

Mr. Thorup: Your Honor, may I take my doctor out of order as we had already discussed?

The Court: You may.

Whereupon,

Dr. Robert L. Howard,

was called as a witness, first having been duly sworn, testified as follows:

Direct Examination

By Mr. Thorup:

Q. Doctor, would you please state your name and address? A. Doctor Robert L. Howard. Seven Corners Professional Building, Falls Church, Virginia.

The Court: Doctor, would you please spell your name? And repeat your address?

[37] The Witness: Robert L. Howard. H-o-w-a-r-d. Seven Corners Professional Building, Falls Church, Virginia.

By Mr. Thorup:

Q. Doctor, how long have you been in the practice of medicine? A. Since 1955.

Q. Where did you go to medical school and when did you graduate? A. At George Washington University School of Medicine, in 1951.

Q. Are you now associated now in any way with the United States Insurance Company? A. I am the Medical Director.

Q. How long have you been the Medical Director of the United Services Insurance Company? A. Four or five years.

Q. Do you also practice privately? A. Yes.

Q. Do you have any particular specialty? A. Cardiology and internal medicine.

Q. Doctor, in connection with your employment with, or I should say your professional employment with the insurance company, are applications for life insurance policies referred to you? [38] A. Yes sir.

Q. Would you state on what occasions are those applications referred to you? A. If there is any indication of any medical problem they are passed along for my inspection to affect the insurability of the applicant. They are referred to me for an opinion.

Q. Now, doctor, I show you Plaintiff's Exhibit No. 2 for identification, and ask you if that is an executed copy of the application for United Services Life Insurance Company insurance? A. It appears to be.

Q. Doctor, if you were to have received this application in the course of your performing your duties at United Services, what if any action, would you have taken as a result? A. Well, there is no information that I could see on that that indicates any medical problems.

Q. Would this application therefore have been forwarded to you for an opinion? A. This would not have been forwarded to me because there is no apparent medical problem.

Q. Doctor, what particular questions in that application are important to you as being Medical Director? A. The date and the place of the last physical examination, whether or not he has been hospitalized or treated for any illness, or consulted any physician at any time, for any illness in the recent past. If this were true, we would require some [39] information concerning those illnesses.

Q. Now, in the event that an application or one application were to be received by you bearing only a doctor's name in response to the question: "Name all of the physicians and practitioners you have consulted to have examined or treated you within the past five years." That is question 28. If that contained only a doctor's name with nothing

else, what, if anything, would you do as a result of that? A. Before issuing the policy, we would have required information from the physician concerning what illness he had been treated for, and if he had recovered.

Q. What if that physician were not available? A. We would not issue the policy without that information. If that illness might have impaired the applicant's health in any way, we would not issue it until we got that information.

Q. Doctor, what normally can you do, upon receipt from such a physician or physicians of a urinalysis with abnormal findings? A. Well, depending on the degree of abnormality. If it is minor, often it is overlooked, or it might be repeated. But if there is any question of a real impairment of the kidneys, we certainly would repeat it. We would not reject it on the basis of one abnormal urine. Either that, or I would possibly request an opinion of the North American Insurance firm in New York, to request whether or not this policy could be underwritten.

[40] Q. Now doctor, let us assume that you received an application dated January 10th, 1967. That as a result of information on that application, you seek further medical information. And as a result of that action on your part, you were to receive a urinalysis dated November 30th, 1966, which contained the following information: Albumin 4 plus; Sugar, negative; Positive occult blood; 2 to 3 partially granulated casts; 0-1 finely granulated casts; 25 to 30 RBC; 15 to 20 WBC; 2 plus bacteria, what action, if any, would you take? A. Well, in order to give the applicant every benefit of the doubt, we would request an additional culture specimen, and on the basis of that my first impulse would be to reject the application. Certainly until additional information could be obtained.

Q. Now, if the additional information contained essentially the same details, what would then be your action?

Mr. O'Malley: Objection, Your Honor. There is no basis in the record that there was any subsequent urinalysis indicated being taken.

By Mr. Thorup:

Q. If you were unable to secure a second urinalysis, what would you have done? A. I would have rejected the application.

Mr. Thorup: I have no further questions.

The Court: Mr. O'Malley.

[41] Cross-Examination

By Mr. O'Malley:

Q. What proportion of your income is identified with your services for United Services Life Insurance Company?

A. A relatively small percentage. I can't relatively say for certain, but five or ten per cent. I can't give you an exact percentage.

Q. Now doctor, I believe you said you have been doing work for United Services Insurance Company for about 5 years? Did you say? A. Yes, something like that.

Q. And during that five years, how many of their policies have you had occasion to review? A. It varies widely. Anywhere from 5 to 10 a day. Or 2 days a week. Something like 30 to 40 a week. Something like that.

Q. And do all the applications from United Services Company have this question 27A: "Date of your latest service physical examination" on it? A. I think this particular form does. I don't think—They don't all have this information because all forms of this type do but—

Q. Well, when you say all forms of this type, what do you mean? A. I mean of this number. We have many different forms, [42] but all forms of this type have that information.

Q. When you say forms of this type, do you mean forms that apply specifically to forms for service personnel? A. They all are.

Q. You mean all of your policies are for service personnel, is that correct? A. Yes.

Q. Assuming that a man would go on sick call on one occasion, would you want him to answer 27A with the

date of that time he went on sick call for the cold? A. 27A does not relate to sick call. It relates to service physicals.

Q. What is service physical examination? A. It's a routine, regular physical exam given at certain intervals.

Q. By certain intervals, you mean when? A. Well it varies with individuals.

Q. And one is given when they go into the service? A. That's right.

Q. And during that physical examination just about every organ of the body is examined? A. I don't think so. I can speak only from my own physical exam when I was in the service.

Q. What was your own physical service examination? A. It was a very cursory examination, right after Pearl [43] Harbor.

Q. At what time was it given, doctor, right after Pearl Harbor? A. Yes.

Q. Well everything was cursory then. A. Yes.

Q. And how many did you have during the entire time you were in the service? A. Physical exams?

Q. How many physical exams did you have? A. I had one on entrance and one on discharge four years later.

Q. Did you ever go on sick call while you were in the service? A. Yes.

Q. How many times? A. Twice, I believe.

Q. What for? A. Once for the flu viral pneumonia and the other one was called cat fever.

Q. When did you next go on sick call? A. I think it was two years later.

Q. When was that? A. I think about '44 or '43.

Q. And in 1944, doctor, if you answered in question such [44] as 27A, when your last service physical examination was, what would be your answer? A. The date of the last physical exam on admission into the service, whatever date that was.

Q. 1941? A. Yes.

Q. Doctor, how old were you, if I may say? A. I was 41. I was born in 1919, so I'd be about 22.

Q. 22 years of age? A. Yes.

Q. So you had no medical training at that time? A. That's right.

Q. The two times you were in the Army, were you? A. I was in the Navy.

Q. Did the Navy refer to the two items you referred to while you were in the Navy, as sick call? A. What's that?

Q. Did they refer to your visit as sick call? A. I think so.

Q. They didn't say you went to see a doctor or physician, they said you went on sick call, didn't they? A. Yes.

The Court: What was that?

Mr. O'Malley: The answer was, yes, they went on sick call. They didn't go to a particular physician or surgeon.

[45] Q. That was the terminology they used, wasn't it? A. Yes, sir, if they saw a physician, not just a corps man.

Q. But still that was the terminology they used when you went for a cold to see a physician. A. Well, I always saw a physician.

Q. And you went two times on sick call and you saw a physician on that sick call? A. That's right.

Q. Having this 27 in here and having the occasion of the last service physical examination, an insurer would have a pretty good idea that on the date given in answer to that service physical examination; and assuming that there had been no indication that there had been any hospitalization as a result thereof, the underwriter of the insurance company would have a very good opinion that the applicant was in good physical health, would he not? A. If he had not been advised of any other—

Q. I am restricting you to the question 27A and affixing yourself to that, couldn't the underwriter, if the answer is none there as a result of the last service physical examination, wouldn't the underwriter be in a good position to have an opinion that the applicant was in good physical condition, as of the date of that service physical examination? A. The underwriter has to see that he is in good physical [46] condition.

Q. And since the applicants are mostly service personnel, these persons that take out insurance policies are relatively young, are they not? A. Most ages vary from twenty to fifty.

Q. But isn't the vast percentage of the service population between the ages of eighteen and twenty two. A. I wouldn't say that. I see many in their fifties.

Q. And being in the service, where individuals have access to medical treatment and medical care, an underwriter would feel reasonable sure that those applicants from the services were getting good medical care, is that correct? A. If they were in the service, that's right.

Q. And if there was any substantial change reported in their medical record in the service that fact would become known to you or the insurance company, would it not? A. No. We do not have that information available on every application. We don't have that information at all on every applicant. We have information that he gives us here.

Q. So really all you're concerned about is the time from the application to the time the policy is issued with regards to whether there is any change in the condition of the applicant, is that correct? A. We are concerned about anything that concerns the health of the applicant.

[47] Q. So this question 28, reading right after question 27, "name all other physicians and practitioners you have consulted or who have examined or treated you within the past five years"; now in response to that question, do you want an answer to physical examination prior to the date of the last physical examination, or within the five year period if it was a service physical examination? A. No, we expect to get information concerning any physician or practitioner. It says name all other physicians and practitioners who you have consulted or who have examined or treated you within the past five years.

Q. If you had a physical examination a year prior to the answer in question 27, that would mean an examination by a surgeon, would it not? A. A surgeon?

Q. Or a physician? A. Yes.

Q. You didn't want that answer in question 28, did you?

A. We want to know about any physician or practitioner at that time.

Q. Did you want to know, doctor, the name of a service physician, who may have examined the applicant the date of the last service physical examination? A. No, we want to know any physician who had examined the applicant within the past five years.

[48] Q. But you didn't want the last service physical examination? A. We have that information in 27A.

Q. Well you have the last one in 27A? A. Yes.

Q. In 28, you didn't want the one previous to the last one, did you? A. We wanted every physician or practitioner that had examined that man for any reason during the past five years.

Q. Did you want the service physical examination that may have taken place before the last service physical examination that was answered in question 27. A. Yes. We want the name of any physician or practitioner that the applicant had seen during previous five years.

Q. Why didn't question 28 ask for a previous physical examination to the answer in question 27? A. Can you repeat that?

Q. Why didn't question 28 ask for previous service physical examination other than the one asked for in 27A? A. The service physical examination is a routine physical examination. We would like to have that information from them and that's the reason we ask for it in 27A. 28 covers an entirely different area. There are many service people who come to my office as a private practitioner for treatment. Not many, but there are a number because they would prefer to come to my office [49] rather than have to stand in line and wait.

Q. And that would not be recorded in the service record?

A. It would not be in their service record, no.

Q. And yet the insurance company wants to know about the visits to private practitioners? A. Yes.

Q. And that's why they ask 28? A. No. This is because any kind of medical attention or medical care, whether it's from a physician or practitioner.

Q. But it's especially designed to admit that any thing not normally included in the medical files in the service? A. No. It is intended to disclose any kind of medical care not included in the last service physical examination.

Q. That latest service physical examination is rather cumulative. If you have the results of the last physical examination you really don't need the results of the next to last service physical examination? A. If the last one was normal we would not need the previous one. We could rely on the subsequent one.

Q. I am talking about the last service physical examination thing that tells the insurance company which tells the insurance carrier what the conditions of that particular man was at that particular point in time; is that correct? A. That's in 1964.

Q. All right. So if you have that, an insurance company [50] and the underwriter is not really interested in the service physical examination of 1963, what that might have indicated. A. Unless there is an abnormality; then they would be interested in it; yes.

Q. But you wouldn't get that abnormality in answer to question 27. You would get that in the last service physical examination. A. After the latest service physical examination.

Q. Are telling the court that the underwriter in this case in question 28 wants to know a previous service examination to the one in 1964, as in answer to 27A? A. We are asking that he list all physicians or practitioners that he has seen the applicant during the previous five years.

Q. So you want the physical examination that occurred prior to the last one indicated in 27A? A. Prior to 1967; from 1962.

Q. You mean the service physical examination in 1963. You want the applicant to put that answer in answer 28?

A. No; the last service physical in 27A. 28 asks for all other physicians and practitioners he has consulted.

Q. So you're not interested in learning about the 1963 service physical examination? A. If it's normal, no.

Q. I'm not asking if it's normal or if it isn't normal on this application. I am just asking simply, do you ask that [51] that form desires to elicit the service physical examination that may have occurred in 1963? A. No.

Q. All right. And supposing a person does go to a physician for a treatment of a cold after the examination of 1964, in question 28 do you want them to give you the name of that doctor, the address and the date of that visitation for the cold? A. Yes.

Q. If he went to a doctor for a sore throat, do you want it in the report when he went to the doctor for the sore throat for that one visit? A. Yes.

Q. If he goes for an ear ache, do you want that recorded in 28? A. Yes, sir.

The Court: Doctor, if he had done that in 1963, would you have wanted it?

The Witness: Yes, sir. We would want the information concerning the illness because often times the patient may not know the full impression.

The Court: Go on, Mr. O'Malley.

By Mr. O'Malley:

Q. Doctor, the underwriter of servicemen's insurance having the benefit of the last service physical examination, [52] having access to the serviceman's record; having the realization that the qualifications for entrance into the the military is somewhat higher than it is for normal citizens or normal people in the United States who are not servicemen; they are in a better position to restrict their losses in writing insurance than insurance companies who are underwriting for the general public, are they not? A. Would you mind repeating that?

Q. Not at all. If you have two insurance carriers, one who writes for the general public and one who writes for service personnel; assuming that those writers for the

service personnel have the benefit of what this service physical examination was; having some access to the records of that personnel; realizing that such personnel had access to free medical treatment and consultations with doctors and realizing that the posture of servicemen has to be in relatively better health than the general public. Realizing all these considerations, a writer for an insurance company for such service personnel is in a better position to restrict possible losses of his writing of such insurance than he would be in writing for the general public, is that correct? A. We expect people to be healthy in general.

Q. Do you? A. Do I what?

Q. To be healthy as in the general public. [53] A. No, I don't.

Redirect Examination

By Mr. Thorup:

Q. Now doctor, if you were to have received this application and assuming that the effective date of the policy would have been 1 March, 1967. You stated before that there is nothing remarkable about that examination, and it probably wouldn't come to you personally, so the policy would be issued. Now, if you had received this policy prior to March 1st, 1967, if you were aware that this person had been hospitalized in a VA hospital, what, if any action would you then take?

Mr. O'Malley: I object to that, Your Honor, as not being material, that being in light of what we stressed earlier this evening. The terminal point was January 19th, when the contract was accepted.

The Court: When was he actually hospitalized?

Mr. Thorup: The 23rd of February, Your Honor.

The Court: Mr. O'Malley, I will let it in.

By Mr. Thorup:

Q. If you had received this application on January 10th for a policy which is to become effective March 1st, 1967,

and you were to learn on or after February 23rd that before March 1st that he had been hospitalized at the VA hospital in Syracuse, New York, what, if any action would you take? A. Well, of course we would cancel it unless we got [54] information concerning the hospitalization.

Mr. Thorup: I have nothing further.

Mr. O'Malley: Your Honor, I have inadvertently forgotten something I should have taken up on cross-examination.

The Court: Very well, go ahead, Mr. O'Malley.

Recross-Examination

By Mr. O'Malley:

Q. Doctor, Mr. Thorup read to you the results of the urinalysis examination that were performed on November 30th of 1966. You recall that he related therein, did you not? A. Roughly.

Q. And as a result of that, do you recall that you said that you would request that another urinalysis be taken, is that correct? A. Yes sir.

Q. So that would not preclude United Services Insurance Company from writing that policy? A. Yes it would. We would not have written it.

Q. Until you had further medical information? A. Right.

Q. Further urinalysis? A. Right.

Q. All right, assuming further doctor, that a urinalysis was taken again on December 1st, 1966, which was essentially normal and negative. Assume further that a subsequent urinalysis [55] was found on December 14th to again be normal. Assume that a further urinalysis was taken on December 21st and again found to be normal. Assuming further that a physician had concluded during four visits of the applicant: November 30th, December 1, December 14th, December 21st, 1966, that the applicant was asymptomatic. On that basis you probably would have issued the insurance policy, would you not? A. Not with the abnormality in the subsequent diagnosis which we don't have from the information.

Q. Don't your regulations suggest that where you have an abnormal urinalysis, that you have further urinalyses taken and if they prove normal then the policy should issue? A. It may or may not. It depends on the specific condition. How badly abnormal the initial specimen was.

Q. But assuming that was the abnormality you had suggested, and assuming on three subsequent visits within 21 days that the urine specimen was normal, then you would have authorized the writing of that insurance? A. I probably would have suggested that we send the application to North American for their opinion.

Q. You may have suggested it? A. I probably would have suggested it because of the 4 plus albumin and the number of red cells.

Q. But don't the regulations of the company to the people who are writing the insurance say that one abnormal urine specimen [56] may not have any finality and you're not supposed to act on that? You must take further urinalyses? A. We don't have a list of regulations. If there is an abnormality referred to me and it is up to me, in my judgment, as to what should be done. And then there would be other further consultation with other medical directors to determine if the policy could be written.

Mr. O'Malley: May I have this marked as Plaintiff's Exhibit No. 3 for identification?

(Whereupon Plaintiff's Exhibit No. 3 was marked for identification.)

Mr. O'Malley: There is one in the file, I think. It's connected with the defendant's motion for summary judgment.

By Mr. O'Malley:

Q. I show you what has been marked as Plaintiff's Exhibit No. 3 for identification, doctor, and ask you whether you are familiar with that? A. Yes.

Q. And what is it? A. It is copy of pages of an underwriting manual which are provided to non-medical personnel to help them evaluate medical problems.

Q. Have you seen that before? A. Not this particular one.

Q. Is that one that is like the ones utilized by United [57] Services Insurance Company? A. Well, I don't know—

Q. Well, you have never seen that before? A. I have not seen that particular manual before?

The Court: Is this included in the pre-trial document?

Mr. O'Malley: I don't know, Your Honor, if it was included in part of the defendant's motion for a summary judgment.

By Mr. O'Malley:

Q. But you have seen things like that, haven't you? A. Yes, I have seen things like that.

Q. And all of them caution the people who are writing such applications should not be discouraged by a single abnormal urinalysis? A. You mean the underwriter is not concerned?

Q. Not the underwriter, but the instructions are that a single abnormal urinalysis report is not to discourage the writing of the insurance but rather that subsequent urinalyses should be taken in order to make a determination? A. Well, the final determination is up to the discretion of the medical director to take the medical data and evaluate it, whether it is objectionable or whether or not an additional rate is necessary.

Q. An additional rate? That means you would charge the person more for the premium than would normally be charged? A. Charged what?

[58] Q. You would charge more. The premiums would be higher. A. Yes, if the risk is not unacceptable, or it could be rejected.

Q. But the fact that you had one abnormal urinalysis, you could still possibly write the insurance if subsequent urinalyses were normal or you may desire to write insurance with higher premiums? A. That would depend on

the additional information we got concerning the illness that caused the original abnormal urine.

Mr. O'Malley: That's all, Your Honor.

Further Redirect Examination

By Mr. Thorup:

Q. Doctor, is the urinalysis which reveals 8 to 12 white blood cells, I believe it—bacteria; 3 to 6 white blood cells, is that a normal urinalysis? A. No.

Mr. Thorup: I believe that is all I have, Your Honor.

The Court: May the doctor be excused?

Mr. Thorup: Yes, sir.

The Court: Mr. O'Malley.

Mr. O'Malley: Yes, Your Honor.

The Court: Thank you, doctor, you may be excused.

(Witness excused.)

The Court: At this time we will take a five minute [59] recess.

(Whereupon at 2:50 P.M. the Court recessed and reconvened at 2:55 P.M.)

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[60]

Joelena Wells Swarn

was called as a witness, first having been duly sworn, testified as follows:

[61] **Direct Examination**

By Mr. O'Malley:

Q. Will you state your name, please? A. Joelena Wells Swarn Day.

Q. Will you spell your last name, please? A. D-a-y.

Q. And where do you live? A. 2330 Good Hope Road, S.E., Washington.

Q. And were you married to Lt. Swarn? A. Yes.

Q. And are you the plaintiff in this case? A. Yes.

Q. And were you the widow of Lt. Swarn? A. Yes.

Q. And were you the named beneficiary on the insurance policy now in litigation? Is that correct? A. Yes.

Q. On October 13th of 1966, how old was your late husband? A. Twenty-four.

Q. Approximately? A. Twenty-three.

Q. And your answer is 23 on October 13th of 1966? A. Yes.

Q. When did he go into the service? A. The last of September of 1966.

[62] Q. And prior to that time, what was his military affiliation? A. Air Force ROTC.

Q. Did he go to college? A. Yes.

Q. Which college? A. Michigan University.

Q. And did he graduate? A. Yes.

Q. When did he graduate? A. In '66.

Q. And when were you married? A. In '66.

Q. What date, if you remember? A. August 6th, 1966.

Q. Take your time now. Now from August of 1966, until he went into the service, where did you and he live? A. In Washington.

Q. And during that time, what was your husband's general physical condition? A. Good.

Q. And when he went to the service, he went to New York, did he not? A. Yes.

Q. Did you accompany him up there? [63] A. Yes.

Q. Did you stay with him up there? A. Yes.

Q. Did you stay with him all the time, or just on weekends? A. Just on weekends.

Q. Approximately how many weekends did you stay with him before he went on temporary duty to Tyndal Air Force Base? A. Every other weekend, either I would go up, or he would come down to Washington.

Q. And during that time, what was his general physical condition? A. Good.

Q. And when did he go to Tyndal Air Force Base, if you recall? A. The last part of November, into the first part of December.

Q. Of 1966? A. Yes.

Q. Did you go down with him or did you visit him down there? A. I visited him.

Q. Did you have occasion to stay there for any prolonged period of time? A. 10 days.

[64] Q. And what 10 days was that? A. December 23rd, just before Christmas, and through the New Year.

Q. And when was the last time you visited Tyndal Field, before January 19th, 1967? A. I only went there one time and that's the time I told you.

Q. And the day you left him was what? A. January 2nd.

Q. And what was his general physical condition at that time? A. Good.

Q. And when did you next see him after January 2nd? A. The last part of January, he left Tyndal.

Q. Do you know whether that was the last week in January, the last day? Or what? A. It was the last week in January.

Q. Did you and the late Lt. Swarn have any children? A. No.

Q. Did you have any conversations with the late Lt. Swarn from October 13th, 1966, to January 19, 1967, with regards to children? A. Yes.

Q. What was his attitude and what did he say to you as regards to children? [65] A. He wanted a family of four.

Q. He wanted to have four? A. Yes.

Q. He wanted you to begin having a family, is that correct? A. Yes.

Q. Can you tell us what his general condition was? Was he a very active person, a moderately active person or not too active a person? A. He was active. I would say he likes sport—

The Court: You will have to keep your voice up a little.

The Witness: He was active.

By Mr. O'Malley:

Q. Are you familiar with the late Lt. Swarn's handwriting? A. Yes.

Q. I'm directing your attention to the reverse side of Plaintiff's Exhibit 2. Specifically, I point to answer to 27 September '64. The answer being to that question: None. 28, the answer is: None. 29, written: No. 30, an answer written: Yes. And I ask you whether you can tell us whether that is your husband's handwriting or not? A. It isn't my husband's handwriting.

Mr. Thorup: Your Honor, I ask that the question and answer to be stricken. The issue has not been raised until this very moment as to whether or not these were the answers that he [66] gave.

The Court: Well, the question was whether or not it is his handwriting.

Mr. Thorup: But, Your Honor, that would be relative only if there was some question whether these were the answers that were elicited.

The Court: Well I assume that Mr. O'Malley is going to go further although the question you elicited, Mr. Thorup, isn't in the pre-trial statement.

Mr. Thorup: There's nothing there. There's no——

The Court: I do not know what Mr. O'Malley——

Mr. O'Malley: I will tell you what I have in mind. The law is clear that when it is signed by the applicant, he is bound by the answers, but when the trier of the facts get into the matter of whether there were ambiguities, I think that it is important for said trier of the facts to know that the agent for the company had asked these questions of the applicant, and the agent for the company had written these answers.

The Court: Are you testifying that this is the handwriting of the agent?

Mr. O'Malley: If it's not the applicant it has got to be somebody for the insurance company.

The Court: Not necessarily.

Mr. O'Malley: Well, the applicant signed it.

The Court: Ask the plaintiff some more. It might be [67] her handwriting, I don't know.

By Mr. O'Malley:

Q. Were you in Tyndal Air Force Base on January 10, 1967? A. No.

Q. Were you with him when he signed the insurance policy? A. No.

Q. I show you what appears to be the signature of Charles L. Swarn. Can you recognize that signature?

A. Yes.

Q. Can you recognize that as the signature of your late husband? A. Yes.

Q. I show you the signature of George Bolling, (phonetic sp.) witness. Do you recognize that signature? A. Yes.

Q. Do you recognize it? Have you ever seen that before? A. That's the agent's name.

Q. How do you know? A. I saw it on a little card.

Q. That's the insurance card? A. Yes.

Q. But you are not familiar with his signature? A. I've never seen him, no.

Mr. O'Malley: Will you indulge me just a moment, Your Honor?

[68] The Court: All right.

Mr. O'Malley: Your witness.

The Court: Mr. Thorup.

(Whereupon Defendant's Exhibit No. 3 was marked for identification.)

Cross-Examination

By Mr. Thorup:

Q. Mrs. Day, is this also your husband's signature? A. Yes, it is.

Q. And would you state what date that is? A. 2 March '67.

Q. Have you ever seen this card before to your knowledge? A. No.

Q. Would you kindly read—

The Court: Have you shown that to Mr. O'Malley?

Mr. Thorup: Well, I didn't see that it was interesting enough, but I will show it to Mr. O'Malley.

Mr. O'Malley: I object to it, Your Honor, I don't see where it has any relevance.

The Court: He has not moved it into evidence.

Mr. Thorup: May I continue with the identification, Your Honor? I'm going to ask the witness to read it, but I don't want to—— She's not going to read it out loud.

The Court: Has she examined it?

Mr. Thorup: Well, she has already examined it, and [69] identified her husband's signature. This has to do with the receipt of the policy.

The Court: Is there any question as to that?

Mr. O'Malley: None.

The Court: What is the point of that, Mr. Thorup?

Mr. Thorup: I want to establish the date that is on this card, as being the date that the policy was received.

The Court: Well, we have on the pre-trial statement that the policy was to be effective March 1st, 1967.

Mr. Thorup: All right, I will drop my pursuit of this particular thing at this time.

Mr. O'Malley: The pre-trial statement also said that the policy was issued on——

The Court: I understand, yes.

By Mr. Thorup:

Q. Mrs. Swarn, are you aware of the date when your late husband entered the hospital in New York?

Mr. O'Malley: Objection, it's not material, Your Honor.

Mr. Thorup: We are getting back to the same thing, Your Honor. It is material. Anything that happened prior to the effective date of this contract.

The Court: Let her answer the question.

Mr. Thorup: Is it a fact that he entered the VA hospital in New York? [70] A. Yes.

Q. Do you know the name of the hospital? A. Veterans' Administration Hospital of New York, in Syracuse.

Q. Is it not true that he entered the hospital on February 23rd, 1967? A. Yes, that's true.

Q. And is it not true that on March 1st, 1967, he was still there? A. Is that a weekend?

Q. I don't know, was he out on weekends? A. Yes.

Q. But from and after February 23rd, 1967, with the exception of weekends, he was in the hospital, is that correct? A. Yes.

Q. And with the exception of weekends, was he ever out of the hospital again? A. Yes, when he came from——

Q. From New York to where? A. To Andrews Air Force Base.

Q. Are you aware of the cause of his death?

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[71] Mr. O'Malley: Your Honor, I would object to the cause of death that is on there too. I wouldn't object to anything else that is on there.

By Mr. Thorup:

Q. Have you ever seen this before, Mrs. Swarn? A. Yes.

Q. Do you know what it is? A. Yes, it's a death certificate.

(Defendant's Exhibit No. 4 marked for identification.)

By Mr. Thorup:

Q. I show you what has been marked for identification as Defendant's Exhibit No. 4. And I ask you under what circumstances you received that?

The Court: Just a minute, Mr. Thorup. Would you repeat the question, please?

(The Reporter: I show you what has been marked for identification as Defendant's Exhibit No. r. And I ask you under what circumstances you received that?)

The Witness: This is a final report, and it was mailed. I got it through the mail.

By Mr. Thorup:

Q. Was this mailed at your request——

The Court: Mr. Thorup, if you will please stand back a little and Mrs. Day, if you will not hold your head so close [72] to the microphone.

The Witness: This is something they send to all of them, I guess. It came through the mail. I knew that they were going to send it to me. That's what they do.

Mr. O'Malley: Your Honor, I would not object to that document No. 4 of the defendant going into evidence, with the exception of the opinion aspect of it, which is the cause of death. And I object on the grounds of the New York Life insurance.

Mr. Thorup: I would offer it Your Honor.

The Court: What do you say with respect to the New York Life insurance?

Mr. Thorup: This falls into the same category, Your Honor, as an autopsy or any other death certificate. It is an official document prepared in the normal course of events. She received it through the normal course of events, as she has testified.

The Court: Mr. O'Malley, you cited the New York Life insurance case.

Mr. O'Malley: Yes, Your Honor, it says that even when you have shop book entries of medical reports and examinations; that there are parts of the examinations that are in fact diagnoses and opinions and are objectionable. Otherwise, Your Honor, I would be bound by the examination of a nameless doctor with a diagnosis as to what his diagnosis was.

[73] The Court: Where did the lieutenant die?

Mr. Thorup: At Andrews Air Force Base, Your Honor. Department of the Air Force, Washington, 25, D. C.

The Court: I will reserve a ruling on that.

Mr. O'Malley: Your Honor, if it will help in your determination of this, I also have the final autopsy protocol. It appears to be the original, and I would offer that.

The Court: I imagine Mr. O'Malley is going to have the same objection.

Mr. O'Malley: Yes, Your Honor.

Mr. Thorup: No, it does not appear to be an original. It appears to be a copy.

The Court: Has Mr. O'Malley seen it?

Mr. Thorup: I think he has.

Mr. O'Malley: I have seen it. I have the same objection, Your Honor.

The Court: Well, let us have it marked for identification.

Mr. Thorup: This is autopsy protocol dated 23 August, 1967, which I would ask to be marked as Defendant's Exhibit No. 5 for identification.

(Whereupon Defendant's Exhibit No. 5 was marked for identification.)

Mr. Thorup: I would also like to offer this, Your Honor, but I take it, Your Honor, would reserve.

[74] The Court: That is correct.

Mr. Thorup: I have no further questions, Your Honor.

Mr. O'Malley: No further questions.

The Court: All right ma'm, you may step down.

(Witness excused.)

Mr. O'Malley: Your Honor, the plaintiff rests.

The Court: All right, in accordance with our understanding, we will adjourn at this time. You have two more witnesses, Mr. Thorup?

Mr. Thorup: That's correct, Your Honor.

The Court: Who are they?

Mr. Thorup: This is Riley Carter, the underwriter for People's Life Insurance Company, and Miss Verla Drebes, who was the underwriter for the United Services Insurance Company.

The Court: All right now, in this case, I am going to require; and I will alert you to it, at this point, I am going to require from each counsel the findings of facts and conclusions of law. So over the weekend, at least you can be considering that. And at the continuation of the trial on Monday, I will indicate just what time I would like to have them. Now Miss Karas (phonetic sp.) indicates that on Monday, the impanelling of the jury will perhaps take the greater part of the morning. So we will continue this case at 1:30 on Monday. That will be the

16th. At that time we should get to all of the examinations [75] of the witnesses and argue the case. None of the defendant's exhibits have been admitted, is that correct?

The Deputy Clerk: That's correct, Your Honor.

The Court: And the two of you have reservations about the death certificate and the autopsy?

Mr. Thorup: Yes, I would move the admission of the other documents, Your Honor.

Mr. O'Malley: Your Honor, if I may, I would move the introduction of the insurance policy as stipulated to in the pretrial and also No. 2 for the plaintiff, the application for the insurance policy.

The Court: Very well.

(Plaintiff's Exhibits 1 and 2 marked in evidence.)

Mr. Thorup: Your Honor, I will move the introduction of the exhibits on Monday.

The Court: All right, gentlemen, that will be Monday at 1:30.

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[128]

TRANSCRIPT OF PROCEEDINGS, FEBRUARY 16, 1970

The Court: Mr. Thorup, I understand you are carrying the laboring oar this afternoon.

Mr. Thorup: That is correct, Your Honor.

Shall I call my next witness?

The Court: Surely.

Verla M. Drebes

called as a witness by the Defendant, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Thorup:

Q. Would you please state your name and your address?

A. Verla M. Drebes.

Q. Your address? A. 5518 Carney Lane Drive, New Carrollton, Maryland.

Q. You are employed by the United Services Life Insurance Company? A. Yes.

Q. How long have you been so employed? A. Almost 16 years.

Q. Would you state what your position or title is with the company? A. I am a home office underwriter.

Q. Would you state how long you have held that position? [129] A. Over 15 years.

Q. Are you the chief underwriter? A. Yes, I do all underwriting at the home office.

Q. Would you state in general terms the duties of an underwriter for a life insurance company? A. Well, an underwriter reviews the applications when they are received at the home office and if there is additional medical information needed to make a decision, they request that. Otherwise, they approve the application so that the policy can be issued.

Q. In the course of your duties with the company is any particular expertise involved? Is there a proficiency in any particular area involved in the discharge of your duties? A. No; approve the applications when I receive the medical information or those that I can approve without additional medical information, I approve those.

Anything that is involved in a lot of medical records, I consult the medical director for those.

Q. And who is the medical director? A. Dr. Robert Howard.

Q. Your company issues both medical and non-medical policies, does it not? A. Yes.

Q. Could you differentiate, give us the difference between a medical policy and a non-medical policy? [130] A. A non-medical application would be one where the man applying for the insurance is applying for the amount that could be issued non-medical if he was in good health and the amount that he applied for could be approved on non medical.

If he answered none of his medical questions had been serious we could go ahead and issue non-medical.

Then we have many policies that are issued on a medical basis and those are because of age, the amount of insurance that is being applied for or because of medical history and/or current medical findings.

Q. What particular type of insurance or what particular type of applicants does your company, United Services, deal with? A. Most of them are military or wives or children of the military.

Q. Military or dependents? A. Either active or retired.

Q. Are they both officers and non-commissioned officers—I mean and enlisted? A. Just officers.

Q. Officers only? A. Or retired officers.

Q. Did there come a time when your company received this application? And I refer to Plaintiff's Exhibit 2. A. Yes.

[131] Q. Would you examine that policy and state whether or not you have seen it? A. Yes, I have seen it.

Q. Did you see it upon its first receipt by the company? A. Yes; after it's been to the business desk, where the applications are checked in, then it comes to my desk.

Q. I show you this policy worksheet and ask you if this is the worksheet that was prepared in connection with this application?

The Court: Has that been marked for identification?

Mr. Thorup: No, I am going to have it marked right now, Your Honor. A. Yes, it would be the same one.

The Deputy Clerk: Defendant's Exhibit No. 6 marked for identification.

(Policy worksheet marked Defendant's Exhibit No. 6 for identification.)

By Mr. Thorup:

Q. With reference to both the application and this worksheet which you say was prepared in connection with the application, would you state, if you can, the course that this

application took from the time it was received by the company to the time when action was taken to deliver it to the insured? [132] A. When the applications come in they come to the new business desk and there the girls check them to be sure that all the questions are answered, that the application is signed properly, and they give the field representative written business credit for this. Then they start to prepare this worksheet.

The worksheet is then attached with the name typed on there, the amount he is applying for, the plan, mailing address. That information is put on there and it is sent to my desk.

Then I approve the application if it is to be issued non-medical, if there is no reason why it couldn't be issued non-medical as far as the amount, age, medical history and whatever is concerned. I would approve it, initial it and approve it for a policy to be issued.

When it leaves my desk, then it goes to a premium calculator and they put the premiums on the worksheet and the policy forms that would go in this particular policy.

Then it goes to the policy typist and the policy typist types it.

The policies are checked and if it is a current date that they want it dated the same day the application is approved, the policy would be mailed to the field representative. If the insured asked that the policy be dated ahead a month or two months, whatever date he has indicated, then the [133] policy is typed and it is held in a pending file until five days, five working days before the policy is to become effective. Then we mail the policy to the field representative so that he can deliver the policy to the insured on or about the date the policy becomes effective.

Q. I direct your attention to box 13 and ask you if you—box 13 of Plaintiff's Exhibit 2 for identification, and ask you if you can state in what manner the premiums on this policy, this particular one, were to be made?

Mr. O'Malley: I object to this. I don't see the materiality of that, Your Honor.

I mean, the pretrial statement has indicated that the contract was accepted on the 19th of January. How premiums are made—and it's also been stipulated the premiums were made and returned. So that is of no relevance, as I see it.

Mr. Thorup: Your Honor, it has been argued previously that the fact that he post-dated this policy or made the effective date a month and a half hence from the time of the application had some relevancy to the way he felt medically.

This is to show the purpose, or I would proffer that this witness would amply demonstrate that this policy was to be paid by allotment and that there are certain things in setting up the machinery for the allotment that take that time.

The Court: I will let it in.

The Witness: Well, he indicated on here that he [134] was going to pay his premiums through the military allotment, which in this case would be through Air Force allotment.

By Mr. Thorup:

Q. Would you state, if you can, under ordinary circumstances how long it takes to set up an allotment in cooperation with the military? Specifically, with relation to the Air Force? A. Most generally, by dating a policy approximately two months ahead the allotment is in the home office then to pay the first premium when the first premium is due on the policy.

Q. And if the first premium is not in the home office, what happens, by the effective date? A. The premium is charged to the field representative and when he delivers the policy to the insured the insured pays him the first premium.

Q. Was this particular policy a medical or non-medical policy? A. It was non-medical.

Q. With regard to this applicant were there any other records or was there any information available in the files of United Services Life Insurance Company with regard to Lt. Swarn? A. No.

Q. Did he have any other policies with the company?
[135] A. No, he didn't.

Q. Did the company have any information of any type other than what is contained on the application? A. All we had was that in '64 he had probably done about 10 hours of flying, he was a student at that time.

Q. Where was that information gotten? A. This information would have come from the medical information. That was the only thing that was noted.

Q. There was no other medical information at all? A. No medical information.

Q. Was there anything at all remarkable about that application? A. No.

Q. Did it go through in the normal course of business?
A. Yes; it was received on the 13th, a worksheet was prepared on the 13th and the worksheet——

Q. 13th of what month? A. Of January '67.

And it was underwritten on the 13th.

The Court: What date was that?

The Witness: 13th of January '67.

By Mr. Thorup:

Q. Then what happened to that particular application?
A. The policy was typed on the 16th and the policy [136] was checked on the 17th and then it would have been filed.

Q. Filed where? A. In our post-date file, waiting for the March 1 effective date so we could mail it out a few days before the March 1 effective date.

Q. Now, is this procedure that you have described——

The Court: Let me ask you, as far as all work that was to be undertaken by the company, that had been completed by January what?

The Witness: January 17th was the day the policy was checked.

The Court: Who checked it? Did you?

The Witness: No.

The Court: But in any event it was checked by the person responsible?

The Witness: Yes, the policy checker.

The Court: That was January 17?

The Witness: 17.

By Mr. Thorup:

Q. Then I think your testimony is that it was placed in a pending— A. A Post-date file.

Q. Is that located at the home office? A. Yes, in the policy department.

Q. And it remained there until a few days, you say, [137] before the effective date? A. Right.

Q. And then where is it sent? A. It's sent to the field representative.

Q. In this case that would have been who? Do either of these documents— A. Major Bowen would have received it. He is the field representative who sold the policy.

Q. He is the agent who sold the policy to Lt. Swarn? A. Yes.

Q. Where is he located? A. South Carolina, I think.

Q. And was Tindle Air Force Base, Florida, a part of his area of operation? A. Yes.

Q. In the normal course what would Major Bowen have done with this application and policy upon receipt? A. Most of the field representatives contact the insured and advise them that they have their policy and when it would be convenient to see them and they set up an appointment and they deliver the policy.

Q. Do either of these documents indicate what day, specific day the policy was actually delivered to the insured? A. No.

The Court: It was actually delivered to the [138] insured?

Mr. Thorup: To the insured.

Mr. O'Malley: Your Honor, just so that we may understand and have a clear record, he has been asking this witness what generally happens, what might happen.

I objected throughout to what might have happened because it is in conflict with the pretrial statement with regard to the statement that says that on January 1967 defendant issued Policy No. 127506 to the decedent effective on March 1st, '67.

So that the date of delivery or the acceptance of the contract is January 1967 by stipulation of both parties.

Mr. Thorup: Your Honor, I will also call to your attention that in that same provision in the pretrial order it is stipulated that the effective date of the policy was to be March 1st.

Now, to be perfectly honest with Your Honor, I don't know where this January 19th came in. Maybe I was asleep at the time of pretrial.

But I really don't know what relevancy the 19th has or where the fact of the 19th came from.

The Court: Well, this witness has testified that as of January 17 everything that had to be done within the home office as far as the issuance of this policy had been done. I don't know where you get the date of January 19th from.

[139] This is an admitted fact, isn't it?

Mr. Thorup: It is in the pretrial order, Your Honor. But it said issued, and I think issued can be construed as meaning many things, mailed, delivered, uttered forth.

But she has also testified, Your Honor, that this is what happens in the normal course, that it is placed in a hold—

What was the phrase?

The Court: I think I have that in mind. She needn't go over that.

By Mr. Thorup:

Q. Miss Drebes, if in response to question No. 27—

The Court: She has several exhibits there, Mr. Thorup.

Q. —question 27 of the application which is plaintiff's exhibit 2 for identification, if in that box there had been inserted a doctor's name with no other information, what

action, if any, would be taken by you or someone in your department?

The Court: Is it 27?

Mr. Thorup: I'm sorry, Your Honor, 28, name all other.

A. Just the name of a doctor given there, nothing else?

Q. Yes. A. Well—

[140] Q. And his address. A. Well, in a case like that we would write to the field representative and ask him to either have the insured ask his physician to furnish us a statement of what he was treated for or we would have asked to have a form completed so that we could write and get it.

Q. Now, in the event that that— A. Although the question here says they are supposed to give the name of the doctor or hospital and they are supposed to give for what they were treated and if they recovered.

Q. I am asking you if it contained simply the name and address. A. Just the name and address of the doctor?

Q. Of a doctor or doctors. A. Well, we would go back to the field representative and tell him we would need an attending physician's statement from this doctor.

Q. If in answer to question 27 there had been the answer December 21st, 1966, and I am again referring to the application—

Mr. O'Malley: Your Honor, I object to that as immaterial.

Q. —the answer had been December 21st, 1966, what, if any—

The Court: Is that the question with respect to [141] the service exam?

Mr. Thorup: Yes.

Mr. O'Malley: Your Honor, his doctor has already testified what service physical examination is and mere visits to a doctor is not a service physical examination.

The Court: I will let her answer.

This is December '66, if that had been the date given to that question.

Mr. Thorup: Yes.

By Mr. Thorup:

Q. What, if any, would have been your action in response to that? A. Just where it says Part B, Details of any hospitalization, medication or treatment recommended as a result thereof?

Q. No, just a statement that that was the date of the last visit. A. And there was nothing else?

Q. Nothing else. A. I would just assume that was his regular service physical date that he would have had a physical and I would have issued the non-medical.

Q. If it were December 21st, 1966 and under Part B thereof he had listed a drug that had been recommended, [142] specifically, Terramycin, what, if any, would be your action upon receiving that information? A. We would either want a copy of his records of the diagnosis and treatment he had or we would have asked for a current medical examination.

Q. If in response to question 30 of Plaintiff's Exhibit 2—

The Court: Mr. Thorup, may I see that exhibit?

Mr. Thorup: I believe there is a copy, Your Honor. I can use the copy. I have a copy, Your Honor.

By Mr. Thorup:

Q. If in response to question 30—there is a hole in mine—Are you now to the best of your knowledge and belief in good health and free from defect or deformity, I believe is the question, if the answer had been no, with no explanation, what, if any, action would you thereupon have taken? A. Well, I would have had to find out why he answered no to the question because by so answering no, he would have admitted that he did have something wrong.

Q. Are the answers to the questions on the application questions No. 27 A and B, 28, 29 and 30 considered important in determining whether or not the company will take the risk and insure the applicant? A. Yes, they are very important.

[143] Q. Now, if upon request of a doctor, assuming that he had answered with the name or names of doctors, if a doctor had indicated in his response to your question that the insured or the applicant's urinalysis revealed two to three coarsely granulated casts, zero to one finely granulated cast, 25 to 30 red blood cells, 15 to 20 white blood cells and two plus bacteria, approximately between 40 and 45 days prior to the date of the application, what, if any, action would you then take? A. You mean if we had that medical information?

Q. Yes. A. Well, we would then probably ask—we would then ask for a current medical plus two urinalysis reports, home office specimens, so we could have them analyzed to see if this condition had cleared up or if it still remained the same.

Q. Would you issue a policy in the face of such information if that is all you had? A. No, we would not issue a policy on that.

Q. Would you issue a rated policy with that information? A. No.

The Court: In any event, all you would do would be to make a recommendation, isn't it, or would the final determination be with you? A. No, it would be with the medical director.

[144] By Mr. Thorup:

Q. You stated that was Dr. Howard? A. Yes.

Q. Do you consult with him on all medical, all problems of a medical nature? A. Most of them, yes.

Q. You say most. What problems do you not consult with him on? A. Oh, there may be certain cases where it would be a certain rating for, say, a temporary x-ray for one or two years because of an ulcer operation, things like that that is always rated the same. There would be a rating for one or two years temporarily or however the rate goes.

Q. If as a result of inquiry to a doctor or doctors you were to be informed that beginning on October 13, 1966

and up to and including December 21st, 1966 the applicant for that policy had consulted with two physicians on at least eight different occasions, initially for the purpose of relieving him of frequency and pain on urination, if you had found that he had been prescribed gantrisin one gram four times daily for a period of a month, that he had been placed on peridium, that he had undergone a rectal examination whereupon a tender prostate was found, and he had undergone blood tests, that he had been referred to a department of medicine at Tindall Air Force Base for renal biopsy, you were [145] informed that he was told that he had a kidney disease, that he had undergone an intravenous pyelogram, that he had been told that he had proteinuria, that he was placed on terramycin and ferradantin, that he was told that he had glomerulonephritis, under your standard underwriting procedure had you received that information what official position would the company have taken with respect to the issuance of that policy?

Mr. O'Malley: Your Honor, I would object on two grounds.

One, that the hypothetical statement does not accurately state the record of the case and, two, in that we are dealing with medical terms and drugs and the like and it is beyond the expertise of this underwriter.

Dr. Howard has already testified about this matter, anyhow.

The Court: That was, frankly, my reaction when you were asking it.

This lady hasn't been qualified in any way as a medical expert. I think she has indicated that if, in reply to these questions, I think 27 through 30, if there had been a response that would have necessitated further investigation, she would have referred it to other persons.

Mr. Thorup, frankly, I don't know what we can add further by this testimony to that which she has already testified.

[146] Mr. Thorup: Only this one thing, Your Honor: I believe in Dr. Howard's testimony there was testimony that sometimes he was not available.

I can clear that up with this witness right now, what she would do in his absence.

The Court: Sometimes he was not available. Is there any testimony that he was or was not available with respect to this particular case?

Mr. Thorup: I just want to cover all the bases, Your Honor. I don't believe that there was any such testimony. This particular case never got to him at the time of the application, is his testimony, but I want the record to be clear as to what course the company would take in the event that Dr. Howard for some reason were not available and the ultimate decision rested with this lady.

The Court: Could you phrase the question in such a manner that you don't necessarily have to refer to the medical testimony that has been given in the case?

Mr. Thorup: All right.

The Court: That is, in specific terms referring to the medical testimony.

Mr. Thorup: I believe I understand, Your Honor. I will ask it and ask Miss Drebes not to answer it until Your Honor has heard it.

[147] By Mr. Thorup:

Q. If such an application were received and as a result of inquiry to a doctor or doctors named therein certain medical information were supplied to you with regard to the applicant indicating doctor's visits and certain treatment, in the absence of Dr. Howard what, if anything, would be your action with regard to this application?

The Court: All right.

A. Well, if he was just going to be away another day or two and was going to be back, I would just lay it aside and wait until he came in the office.

If he was on a longer, on a vacation and was going to be away longer than that, I would have another alternative,

I could submit it to the reinsuring company that we insure with.

Q. What company would that be? A. North American Reassurance Company of New York.

Q. And is it their manual that you use? A. Yes, we use a graded manual as a guide to underwriting and rating certain cases for certain impairments.

Q. Now, assuming that this Plaintiff's 2 for identification were submitted as is and between the date of the application and the effective date of the policy it were to come to your attention that the insured was hospitalized at a VA hospital; what, if any, would be your action in response [148] thereto?

Mr. O'Malley: I object to the question, Your Honor. He said from the date of application until the effective date of the policy.

It is our contention that the question should be from the date of the application until the acceptance of the policy, for that is when the contract is.

I object to the question as it goes beyond January 19, 1967.

Mr. Thorup: Your Honor, I submit in response to counsel's argument I don't believe there is any contention here that this applicant would be covered by insurance prior to March 1st.

That would have to be part of his argument if he is to rely on that, and that is clearly not the case here.

Anything that happens to the insured prior to March 1st is not covered. He hasn't paid a premium for that period, in the first place.

Mr. O'Malley: The only thing that is material, Your Honor, according to the pretrial statement, as I understand it, by the defendant, he has alleged misrepresentations in three particulars, in answers to questions 27, 28 and 30 for the application for the insurance.

Now, those statements are either misrepresentations and fraudulent or they are not.

[149] What happened subsequent to the acceptance of the contract, hospitalization or the like, has absolutely no legal materiality.

The Court: This question has arisen before.

Mr. Thorup, as I gather, Mr. O'Malley has taken the position that as of January—what date are you referring to?

Mr. O'Malley: The 19th.

The Court: —January 19th, 1967, the contract was accepted by the company.

Mr. Thorup, you are taking the position the contract did not become effective until the policy was actually delivered to the policyholder?

Mr. Thorup: That is correct, Your Honor.

The Court: I will admit the testimony.

By Mr. Thorup:

Q. You may answer. Do you want me to restate the question? A. Yes, please.

(The Reporter read the question.)

A. We would ask for additional medical information.

Q. What would be your action if no additional information were forthcoming? A. We wouldn't issue the policy, then. The policy is not effective until the effective date, which in this case [150] was March 1st.

It would be the same thing—we do this so we have the policies ready to mail out, assign a number to them and approve them.

They are not effective until the effective date of the policy, which in this case would be March 1.

The Court: Let me see the policy.

Mr. Thorup: Thank you.

Cross-Examination

By Mr. O'Malley:

Q. Miss Drebes, when you have a question like that, as to when a policy becomes effective, wouldn't you refer that

to your legal department? The answer is yes, isn't it? A. No; the way we issue those policies, the reason we underwrite them and prepare the policy ahead of time is just a convenience to us so we can mail them out to the insured on time. They are not effective until the effective date of the policy.

Q. You are familiar with the application which is described as Plaintiff's Exhibit 2 in this case of the late Lt. Swarn, are you not? A. Yes.

Q. You don't know when that was mailed out, do you? A. No.

Q. It could have been mailed out on January 16, which [151] was three days after January 13, could it not? A. It would have been a mistake if it was, but it might have.

Q. Sometimes you mail them out to your agents and let the agent hold them, don't you? A. No.

Q. Didn't you say you sometimes mail them ahead of that date to the agent and let the agent hold them? A. Five working days before the effective date.

Q. The agent in this case, what was his name? A. Bowen.

Q. George Bowen? A. Yes.

Q. Did you know him personally? A. Yes, I have met him.

Q. And did you ever have any discussions with him as to how these applications are filled out? A. No, not that I know of.

Q. Do you know what part of the application is written in by, say, Mr. Bowen and what part is written in by the applicant? A. I would say most of this was probably filled in by Mr. Bowen.

Q. Most of the written answers on Plaintiff's Exhibit 2 were written in by the agent, Mr. Bowen, is that correct? A. Yes.

[152] Q. And in order to get the answers he has to ask the applicant certain questions, doesn't he? A. Yes.

Q. And with an applicant giving him certain answers, Mr. Bowen may well disregard certain answers and put them in different than the applicant states them, isn't that correct? A. He certainly shouldn't.

Q. He shouldn't, but he may, is that not correct? He may, contrary to the company's directions, but he could, couldn't he? A. Yes, it could be possible.

Q. And then with regard to question 10, where the answer is 1 March 1967, that 1 March 1967 would have to come from the agent, Mr. Bowen, would it not? A. No, he probably asked—he must have asked the applicant when he wanted it dated, when it would be most convenient for him.

Q. So Mr. Bowen probably explained to him that it takes about six weeks, as is the experience of the United Service Life Insurance Company, for the deductions to get into the payroll in the Army so that the premiums can be paid on time to United Service Life Insurance, isn't that correct? A. Yes, he probably explained it to him.

Q. And the fact that the applicant said 1 March 1967, would that indicate to you that he was not anxious to have it [153] go into effect immediately? A. Yes.

Q. And this was actually a policy of insurance for \$10,000, wasn't it? A. There was a double protective—20,000 for 20 years and then it drops down to 10,000.

Q. But isn't it 20,000 double indemnity if death occurs before a certain date? A. Yes, it's \$20,000 for the first 20 years that the policy is in force.

Q. And that is not an unusually high amount of insurance for a lieutenant in the armed services? A. No, sir.

Q. It is what you would consider the normal amount, isn't it? A. Yes.

Q. 24, it says, List other insurance. What is GLI? A. Government insurance for 10,000.

Q. And New York Life for 5,000? A. Yes.

Q. Was there any inquiry made on this application as to whether there was a physical examination for those policies? A. No.

Q. How long have you been dealing with applications [154] from servicemen for insurance with United Service Life Insurance? A. Almost 16 years.

Q. During those 16 years, in answer to No. 28 do they

oftentimes put sick call down here, at certain bases? A. No, they will say hospitalized for three days, maybe four days, such and such a hospital.

Q. We are talking about 28, which says, Other physicians or practitioners you have consulted, been examined by or treated by. Do they ever put in there just the doctor to whom they went on sick call? A. Well, they name the doctor or the hospitals they are treated at, both military and civilian.

The Court: No, the question was with respect to sick calls.

By Mr. O'Malley:

Q. Do they ever list on there sick call, a certain date at a certain place by a certain doctor? A. No, they don't usually write it in as sick call. They just name the doctor and what they were treated for and say recovered.

Q. And as an underwriter, what are your responsibilities, just to review the applications as they come in? A. Yes.

Q. You don't have anything to do with rating risks [155] of the applications, do you? A. Yes.

Q. You do? A. Yes.

Q. Why is it that the United Service Life Insurance specializes in officers in the military service and their families? A. That goes back further than I, but it's the kind of company that they are. It was organized that way and that is the kind of applicants that they specialize in.

Q. Why don't they do business with enlisted personnel? A. That I couldn't answer you because it's always been this way.

Q. Because the risks are less, aren't they, with officers than with enlisted? A. I would suppose so.

Q. And then there are less with service personnel than there are with non-service personnel, the risks? A. Yes.

Q. Question 30, where they ask what the general health of the applicant is, they are just asking for what he thinks his general health is, aren't they? A. Yes; and should he feel otherwise, he should say different.

Q. Question 28, where they say name all other [156] physicians and practitioners, couldn't we get better information with regard to visits to the military infirmary and the like if we asked when you were last on sick call in the service? A. Well, we intend to find out all of them.

Q. But they didn't put in civilian or military, did they? A. No, they just say all others.

This question up here asks the question, Did you have to consult any other physician or take any treatment recommended because of your life service medical examination. And this continues here, Have you within the past five years consulted any.

Q. It says name all others, doesn't it? A. Yes.

Q. Somebody could infer from name all others that they mean other than the service medical referred to in question 27, couldn't they? A. I suppose they could, but I don't think it's done very often because usually—

Q. But it's done, isn't it? A. It might be.

Q. It's misunderstood by the applicant, isn't that correct? A. Yes, the applicant might.

Mr. O'Malley: Thank you. That is all.

[157] The Court: May I ask you just one question to clarify my thinking.

Am I to understand you that if this officer went to sick call for any type of ailment, that you expect him to answer No. 28 with respect to that?

Do you know what question No. 28 is?

The Witness: Yes. I don't think an officer would tell you if they went to the doctor for a cold, unless it was something serious.

So when they list who they consulted there or who treated them there, it's usually for something more serious than just a sick call that they had a cold and they went to the dispensary.

The Court: So, then, your answer is that you do not expect them to detail each visit that they have made on a sick call?

The Witness: The question asks for that, but I am sure that most of them don't answer quite that detailed.

The Court: Well, the question is, do you expect it?

The Witness: Yes, I guess we would. That is what we ask for.

The Court: You say that you know that most of them, or suggested that most of them do not answer it, is that correct?

[158] The Witness: I don't think there would be very many officers that would list in the past, say, five years they went to the doctor, to sick call four times for colds and two times for something else.

I think they pick out the things that is the most serious.

The Court: And that is what you expect them to include as an answer to No. 28, those which in their judgment they think are the more serious, is that correct?

The Witness: Yes, anything that would be serious.

The Court: In their judgment?

The Witness: We ask for all, all doctors they have had treatment from, and I wouldn't think that sick call would be the same thing as consulting a doctor and being hospitalized or being treated.

The Court: Any other questions of this witness?

Mr. O'Malley: I have none.

Redirect Examination

By Mr. Thorup:

Q. Miss Drebes, this policy contains what is known as a contestible clause? A. Yes.

Q. Do you know what the contestible period is on this policy? A. Two years from the time the policy is issued.

[159] Q. Was this claim made and denied within that two year period? A. Yes.

Mr. Thorup: I don't think I have anything further, Your Honor.

Mr. O'Malley: Your Honor, I don't think this is the witness for that contestibility. I don't think it is something that comes within her prerogative.

When somebody dies the incontestibility is no more.

The Court: I think the policy speaks for itself.

Mr. O'Malley: I have nothing further.

Mr. Thorup: If that is a germane point, Your Honor, I have a witness who can supply the information, who is qualified perhaps more than this witness, if Your Honor thinks it is necessary.

The Court: Well, I will let you present your case, your defense, as you see it, Mr. Thorup.

Mr. Thorup: I have no further questions.

Call Mr. Carter.

Riley B. Carter

called as a witness by the Defendant, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Thorup:

Q. Would you please state your full name and your [160] address? A. Riley B. Carter.

3352 North Thomas Street, Arlington, Virginia.

Q. Would you please state how you are employed? A. My present position?

Q. Yes. A. I am vice-president in charge of new business of the Peoples Life Insurance Company, Washington.

Q. In connection with your job do matters of underwriting come under your control and direction? A. Yes, sir.

Q. Would you state what your position would be with regard to the underwriting department? A. Well, we have a number of underwriters who handle the less difficult cases and it is only the more difficult that I see in connection with the——

Q. Would you state how long you have held such a position with Peoples Life Insurance Company? A. Fifteen years.

Q. Is your company engaged in the issuance of life insurance, in the business of the issuance of life insurance policies? A. Yes, that is what we do. That is our business.

Q. In the course of issuing life insurance policies is it your procedure to have a prospective—to have an [161] applicant fill out an application? A. Certainly.

Q. For that insurance.

Does that application contain certain questions having to do with matters of a medical nature? A. Yes, sir.

Q. When you receive applications that indicate that a prospective, an applicant has received medical treatment within, say, the previous five years, what, if any, action is taken by you or someone under your control? A. Well, it depends on the nature of the treatment, how long ago it was.

Q. How is this determined? A. From the information on the application, it gives what he was treated for, the dates and so forth.

Q. And what is done with that information by you or your company? A. Well, if we feel it is significant we contact the attending physician.

Q. And then what, if anything, happens? A. Well, sometimes after receiving information, then we will require a full medical report from our attending physician. Sometimes we act on the information alone, if it is complete.

Q. I show you Plaintiff's Exhibit No. 2, which is an [162] application for life insurance, and ask you if you have seen applications like that or similar to it? A. Yes, sir.

Q. Would you kindly examine that application and state whether or not it is remarkable in any sense? A. I see nothing unusual about it other than it has no medical information on it. It is a clean application.

Q. Are you familiar with underwriting practices generally existing within the field of life insurance underwriting? A. I have some knowledge of it, yes, sir.

Q. Are you familiar with the underwriting practices of companies that are based in or about the metropolitan area? A. I think so.

Q. Would you state whether or not you would take any negative action in response to an application of this sort? A. I see no reason to.

Q. And would that be the normal course of action taken on the standard underwriting procedures in effect among the companies in this metropolitan area? A. I don't know any company would take any other action than issue this policy with this information.

Q. In the event that in answer to question No. 28 of Plaintiff's No. 2, if in answer to that there were the names of two doctors with their addresses listed, what, if any, [163] difference would that make with regard to your previous answer? A. Well, I would review the application to see if he had—what the medical history over here was for. If it was a cold two years ago, I certainly wouldn't take any action.

Q. What if it contained the names of two doctors together with their addresses, if it were indicated to you that he had been treated within the past five years by two different physicians? A. We would have contacted the doctor.

The Court: Mr. Thorup, while you are questioning this witness concerning the application may I see No. 1? That also includes the application.

Mr. Thorup: I'm sorry, Your Honor.

By Mr. Thorup:

Q. If upon contacting one or more of those doctors whose names might be furnished in the application it were determined that the applicant were under treatment by either one or both of them at that time, what, if any, action would you take? A. It would depend on what the treatment was for. Some treatments you would decline, others you could probably issue with an extra premium.

Q. If in response to request for information from these doctors it would be determined that the applicant's urinalysis showed abnormal findings, what would be your [164] position with regard to the application? A. We would order a specimen and make our own urinalysis.

Q. And if you were to get no specimen in response to

your request, what would you do? A. Probably couldn't take action on it.

Mr. Thorup: That is all I have, Your Honor.

Cross-Examination

By Mr. O'Malley:

Q. If one abnormal urinalysis, Mr. Carter, followed by six normal over a period of two and a half months, would that satisfy the requirements of your underwriting criteria? A. It usually would, particularly if we had made one of them.

Q. Peoples Life Insurance, is that who you are employed with? A. That is right.

Q. Do you specialize in military personnel? A. We do not.

Q. Do you insure military personnel? A. Yes, sir.

Q. Do you insure a large number of military personnel? A. I wouldn't say so.

Q. Would you tell us what percentage of your life insurance is dedicated to military personnel as distinguished [165] from the general public? A. Five percent or less.

Q. In that five percent do you have special forms prepared for the military as distinct from the other 95 percent? A. No, the same application for all.

Q. For all of them? A. Civilian and military, the same.

Q. So does the application that you have contain some questions that pertain only to military and some that pertain only to civilians? A. We have specific military questions as to his rank, so forth, how long he has been in, whether or not he is going to Viet Nam.

Q. You are interested in that, aren't you? A. Yes, sir.

Q. But knowing that you are dealing with military personnel you specifically gear those questions toward the military, don't you? A. No, our health questions are all the same. We just have one little special part on the back that asks his rank and so forth.

Mr. O'Malley: That is all I have.

Mr. Thorup: No redirect.

The Court: Mr. Carter, you may be excused.

Mr. Thorup: Your Honor, at this point that is [166] all the witnesses that the defense has. However, I would like to read certain portions of interrogatories and answers into the record. These are interrogatories propounded by the plaintiff to the defendant.

Mr. O'Malley: Your Honor, I am not sure that those answers are germane. They are self-serving by the plaintiff to the defendant. I don't think all interrogatories and all answers are admissible; I think those just against interest.

The Court: Let's see what they are.

Mr. Thorup: Your Honor, these are the plaintiff's interrogatories to the defendant. The answers are sworn and they have not been rebutted.

I refer specifically to Interrogatory No. 2 that was served on the defendant on or after the 28th of January 1969. The question:

"What was the cause of the decedent's death? Give the source of your information to the answer to this question."

Mr. O'Malley: Your Honor, I object to that question and to that answer.

If it were the other way around, if the defendant had sent the interrogatories and these were the plaintiff's answers, it could be used against him, but questions by the plaintiff to the defendant and then for the defendant to put [167] those answers in is merely a self-serving declaration.

Mr. Thorup: Your Honor, these questions and answers are part of the record. They are in the record. I am simply reading them at this time to point them out to Your Honor.

The Court: Isn't the question in the New York Life Insurance case too?

Mr. O'Malley: Yes, sir.

Mr. Thorup: No, Your Honor, this is answers to interrogatories. This has nothing to do with hospital records.

The Court: Are you saying, Mr. Thorup, that if an answer

to an interrogatory is a part of the record but at the same time it raises a question of law the Court cannot rule on it?

Mr. Thorup: I am saying, Your Honor, if the record and if the evidence does not otherwise contradict the answer that was given, that answer certainly is properly part of the record.

The Court: Do you conceive that the answer to No. 2 falls within the purview of the New York Life Insurance Company case, aside from the part that you argue that it is included within the record?

Mr. Thorup: Well, inasmuch as it contains a medical conclusion, yes.

The Court: Well, isn't that the thrust of the case?

[168] Mr. Thorup: Certainly, Your Honor, the plaintiff has had every opportunity either through further discovery or by whatever method to impeach these answers and no such effort has been made.

I am going back to my original theory here and we are away certainly from the New York Life case.

The Court: Mr. Thorup, I am going to require that you give me some authority for your position.

I think—well, my reaction is that we are going to get into the New York Life Insurance case and if you perceive how I react to it and what my position will be when you raise the question of introducing certain exhibits, requesting that they be admitted, and I have the same reaction as to Question No. 2.

Now, if you can present to me some authority, and I am not pressing that you present it right now, I will reserve an opinion on it.

I am prepared, I think, to rule with respect to the death certificate and the autopsy report.

Mr. Thorup: I would at this time submit and offer into evidence the death certificate.

Mr. O'Malley: Objection, Your Honor.

The Court: At this point, Mr. Thorup, I am not going to allow them to be introduced into evidence and it is on

the authority of the New York Life Insurance Company case.

[169] Now, if you can present to me some authority to the contrary, I certainly will consider it. But as I read the New York Life Insurance Company case, I don't see how I can admit it.

Mr. Thorup: You mean in view of the fact that it contains the cause, information relating to the cause of death?

The Court: Well, at this point let's look at the death certificate.

The question of the cause of death as indicated on the certificate it seems to me is the type of evidence which the New York Life Insurance Company case rules out.

Mr. Thorup: What about purely objective findings, Your Honor?

I have what is a part of the autopsy protocol that was carried out by the military after his death. This contains purely objective findings. It does not, to my knowledge, contain any conclusions, medical conclusions. Your Honor has seen many of them, I am sure. This is the examination of the spleen, liver, kidneys, so on and so forth. I am prepared to offer that.

The Court: Mr. O'Malley?

Mr. O'Malley: Your Honor, I have read the two pages. I want to see the next one, if I may. (Pause.)

If I may, was this submitted as a part of the pretrial?

[170] Mr. Thorup: No, I don't think so.

Mr. O'Malley: I won't object to this.

The Court: You will not object to it?

Mr. O'Malley: No, sir.

The Court: That is the autopsy report?

Mr. Thorup: It's what is called clinical record, narrative summary. It consists of three pages and I ask that it be marked.

The Deputy Clerk: Defendant's Exhibit No. 7 for identification.

(Document marked Defendant's Exhibit No. 7 for identification.)

Mr. Thorup: And I offer it, Your Honor.

The Court: You will not object to Defendant's Exhibit No. 7?

Mr. O'Malley: No, sir.

The Court: Let it be admitted.

(Defendant's Exhibit No. 7 for identification received in evidence.)

The Court: Now will you identify it again for the record?

Mr. Thorup: This is a clinical record, narrative summary prepared in the case of 2nd Lt. Charles L. Swarn.

The Court: Prepared by whom?

[171] Mr. Thorup: Captain David L. Alstott.

The Court: On what date?

Mr. Thorup: U.S. Air Force, M. C., Medical Corps.

The Court: What is the date of it?

Mr. Thorup: It's signed 3 November '67, so I take it that is the date that it was prepared.

The Court: For what purpose was it prepared?

Mr. Thorup: This is in connection with the autopsy. It is the examination of the vital organs, the body generally and the vital organs.

Your Honor, at this time I would like to offer in their entirety the depositions of Dr. Mel Forman and Dr. Norman E. Jones, the latter of which was taken September 22, 1969, the deposition of Dr. Forman taken on the 25th of August 1969.

The Court: Mr. O'Malley.

Mr. O'Malley: I would object to certain portions of those depositions, Your Honor. I will indicate which ones I object to and go over them, if you wish.

The Court: I thought I suggested when we were here the last time discussing these, that this perhaps be ironed out prior to coming back to court so that the only thing that I would have to look at would be the bare deposition so that we could expedite this matter.

Mr. O'Malley: I don't think he will agree to [172] leaving out what I want left out, at any rate, but I didn't understand Your Honor's suggestion that way.

The Court: How much is it, Mr. O'Malley?

Mr. O'Malley: Well, regarding seven pages on Dr. Forman or parts of seven pages and with regard to Dr. Jones' deposition, just three pages.

The Court: Do you know what they are, Mr. Thorup?

Mr. Thorup: I have a pretty good idea that they are the things that he objected to at the time, but I have not specifically heard them.

Mr. O'Malley: Page 11, I would invite the Court's attention to, mid-way in the page, the answer:

"I saw him on February 15, 1967."

I would object to that as not being germane.

Mr. Thorup: I agree.

The Court: Page 11, from the answer, "I saw him on February 15, 1967," to the remainder of the page?

Mr. O'Malley: Yes, sir.

Page 12—

Mr. Thorup: Your Honor, on the second reading of that—all right.

Mr. O'Malley: Page 12, the entire page.

Mr. Thorup: This is again referring to the February 15 examination. Insofar as it relates to the February 15 examination, and from my recollection of this page it all [173] does, I would agree to that.

The Court: All right, No. 12 by agreement. The objection is sustained.

Mr. O'Malley: That really goes over to the end of that line on page 13.

The Court: The first three lines on page 13?

Mr. O'Malley: Yes, sir.

Mr. Thorup: This is already in evidence, anyhow, Your Honor, through Mrs. Swarn, so I would go along with that.

The Court: Mr. O'Malley, I am going to recess for 10 minutes. Meanwhile, will you do what has to be done within the circumstances within that 10 minutes.

Mr. O'Malley: Yes, sir.

(Recess.)

Mr. O'Malley: Your Honor, I think we were up to page 13 of Dr. Forman.

I have no objection to 14.

Your Honor, we agree that page 15 down to the middle, where the answer is, "Yes," and followed by, "Question—Doctor, to the best of your recollection," just to the answer, "Yes," we agree should be excluded.

Mr. Thorup: Yes.

The Court: So everything above the seventh line from the bottom of the page is excluded.

Mr. Thorup: That is correct.

[174] Mr. O'Malley: No, 10 lines.

The Court: Beginning with the question, "Doctor, to the best of your recollection," from there to the end of the page is included and all above that is excluded?

Mr. O'Malley: Yes, sir.

On page 18, where it goes down to the first question in the column, where it says, "Well, let me rephrase it then. Upon each of the visits that you enumerated and at the conclusion thereof, was he appraised of his medical condition so far as it could be ascertained at that time? Answer—Yes, I believe so."

We say that is a conclusion which really tells us nothing and we object to it for that reason.

Mr. Thorup: I say to the contrary, it tells a lot, Your Honor, and I would urge that that remain in.

The Court: This is your question, Mr. Thorup, is that it?

Mr. Thorup: That is correct, Your Honor.

I don't think that calls for an opinion. That is his recollection.

The Court: I will let it in.

Mr. O'Malley: Then we turn to Dr. Jones, Your Honor.

Starting at line 17, we are agreed that the rest of page 11 be deleted.

[175] Your Honor, on page 15, the last question on the page, "And you're certain that he was aware of this diagnosis that you made? Answer—Yes," on page 16. Again we object on the grounds that is a conclusion in that we don't have what he said to Lt. Swarn.

Mr. Thorup: Your Honor, we are not agreed on that and that is most critical to this case.

The question is very clear, "And you're certain that he was aware of this diagnosis that you made?" The answer is, "Yes."

The Court: What are you saying with respect to it, Mr. O'Malley?

Mr. O'Malley: That is a conclusion on his part. We don't know what he allegedly told Lt. Swarn. This is a judgment as to whether he was fully aware. Aware doesn't even come within apprised. Apprised is one thing.

The Court: What he is referring to as far as the diagnosis?

Mr. O'Malley: Glomerulonephritis.

The Court: Doesn't that answer what you are complaining about?

Mr. O'Malley: I don't care about his diagnosis but what he communicated to the applicant.

The Court: Assume that he communicated to the applicant, to the decedent, that he had in the doctor's judgment [176] this ailment.

Mr. O'Malley: I think we have to have what he told the applicant, Your Honor, not what his judgment is of what the applicant was aware.

That is important because many times in this transcript he says he doesn't recall having told him that he had glomerulonephritis.

Mr. Thorup: I would like to take issue with that, Your Honor. He doesn't say that he doesn't know that he told him. He doesn't know now how he put it to him some three years previous; but he says, I am certain that he was aware of my diagnosis of glomerulonephritis.

Mr. O'Malley: Our contention is that is a judgment on his part, conclusion.

The Court: I will let it in for what it might be worth and I will evaluate it together with all of the testimony and the other relevant parts of the deposition which are agreed upon.

Mr. O'Malley: Page 32 is pretty much the same, starting

at line 5, Mr. Thorup asked, "And further that he was aware of the fact that he was suffering from a condition known as glomerulonephritis?"

"Mr. O'Malley: I object to the question. But you can answer.

"Is that true?

[177] "Well, I would say I'd told him that he had glomerulonephritis. Now, as he said, I can't be sure that he comprehends, but I would say that he knew he had glomerulonephritis and a kidney disease."

And again, "but I would say that he knew he had" is a conclusion on the part of the doctor without the basic facts in the record as to what he told the lieutenant.

Mr. Thorup: He is saying, I told him, I don't know how I put it but I told him he had glomerulonephritis, I told him he had a kidney disease.

The Court: Mr. O'Malley, with respect to each of these situations which you referred to which you entered an objection to which I have not sustained, I am going to request, not suggest but I am going to request that you give me a memorandum with respect to them, supported by some authority.

I will allow the question in.

Now, the page is 32 beginning with line 5 or 6 right on through 15, is that correct?

Mr. O'Malley: Yes, sir, I think it's 5.

The Court: Mr. O'Malley, you object to lines 5 through 16?

Mr. O'Malley: Yes, sir.

The Court: I will admit them.

Mr. Thorup: Your Honor, I think he had some objection to the second page of an exhibit, Exhibit B. It was to [178] the entry following 15 February 1967.

The Court: Where is this?

Mr. Thorup: This is in the back of the deposition. It's Defendant's Exhibit No. 2 for identification B.

The Court: Is it a hospital record?

Mr. Thorup: Yes, chronological record of medical care.

The rest of these records are under Dr. Jones' name, Dr. Jones' signature or made at his request.

The Court: What is the basis of your objection to No. B? That includes the date December 1st, '66 and February 15, '67?

Mr. O'Malley: We object to the February 15 part of it, Your Honor. I think we are pretty much agreed that February 15 is not applicable.

The Court: It says, "In for recheck of urinary problems. Have reviewed the internal medicine"—what is that?

Mr. Thorup: "Consult," I think.

The Court: What is the next word?

Mr. Thorup: "Exam 21 December '66." Then, "Re report VA."

The Court: I will admit that.

Is there anything else now?

Mr. Thorup: If Your Honor will indulge me.

Your Honor, I would offer at this time the work-[179] sheet, Defendant's Exhibit 6 for identification.

The Court: That is what the underwriter testified to?

Mr. Thorup: Miss Drebes, yes.

Mr. O'Malley: No objection.

The Court: Let it be admitted.

The Deputy Clerk: Defendant's Exhibit No. 6 marked in evidence.

Mr. Thorup: Your Honor, I would again offer into evidence the policy receipt card which contains a signature that was identified by Mrs. Swarn.

Mr. O'Malley: Objection.

Mr. Thorup: Dated 2 March 1967.

The Court: Is that the signature of the decedent?

Mr. Thorup: Yes, it was identified as his writing.

The Court: What is the basis of your objection, Mr. O'Malley?

Mr. O'Malley: It is not material. According to the pre-trial statement the policy was issued on January 19.

The Court: It will be admitted.

The Deputy Clerk: Defendant's Exhibit No. 3 marked in evidence.

The Court: All right, gentlemen, are all your exhibits in?

Mr. Thorup: Yes, Your Honor.

[180] Mr. O'Malley: Yes, sir.

The Court: Both sides rest?

Mr. O'Malley: Yes, sir.

Mr. Thorup: We rest.

The Court: Mr. Thorup, how much time did you wish?

Mr. Thorup: Your Honor, I think about 20 minutes.

The Court: All right. Mr. O'Malley, how much time did you want?

Mr. O'Malley: That is all I would require. We still are going to have findings of fact and conclusions submitted, aren't we?

The Court: That is correct. Do you understand that, Mr. Thorup?

Mr. Thorup: Yes, I do, Your Honor.

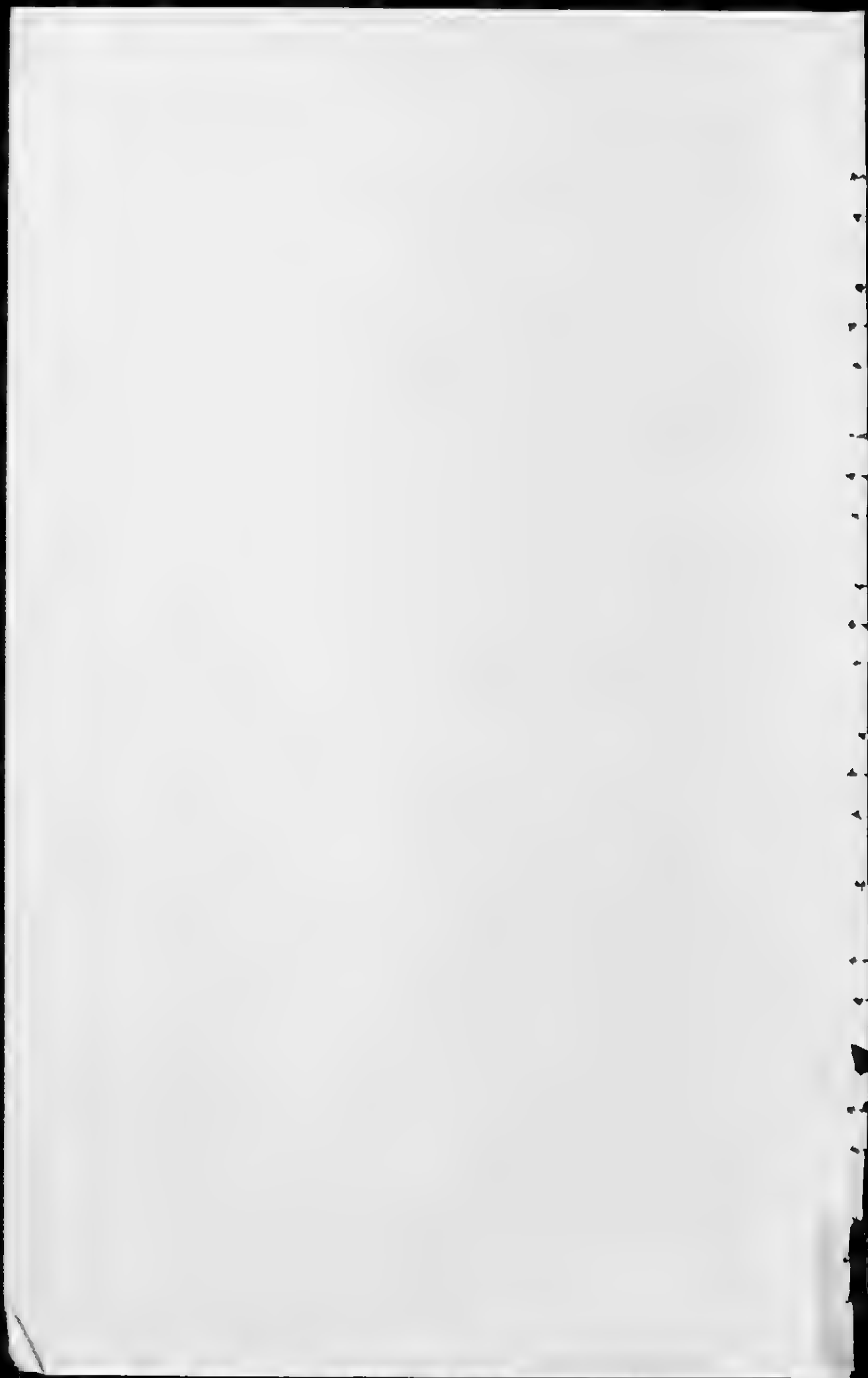
(Closing arguments not transcribed.)

The Court: Gentlemen, I am going to require that each of you file findings of fact and conclusions of law. The case has not been a long case and it shouldn't take too much time, in my judgment, to prepare and file such a statement. I am inclined to request of you that the statements be filed by Friday of this week.

Mr. O'Malley, if you want to submit a memorandum with respect to the portions of the deposition which I allowed in, you may do so; and, Mr. Thorup, if you want to give me some additional authority on the question of the death [181] certificate, I will be happy to consider it. In any event, that too should be submitted along with the findings of fact and conclusions of law.

Gentlemen, we will conclude at this point. Thank you very much. I think that each of you did a very fine job and it is a pleasure to see both of you.

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109a

UNITED SERVICES LIFE



INSURANCE COMPANY

WASHINGTON, D. C.

FILED

MAY 19 1967

ROBERT M. STEARNS, Clerk

POLICY NUMBER 127,506 INITIAL FACE AMOUNT \$20,000
 ULTIMATE FACE AMOUNT \$10,000

THE INSURED IS CHARLES LIGHTFORD SWARN AGE 24

THE BENEFICIARY IS JOELENA WELLS SWARN, WIFE OF THE INSURED, IF LIVING; OTHERWISE THE CHILDREN BORN OF THE MARRIAGE OF, OR ADOPTED BY, THE INSURED AND SAID WIFE, OR TO THE SURVIVORS.

THE OWNER IS THE INSURED

THE FIRST PREMIUM IS DUE 1 MARCH 1967 WHICH IS THE DATE OF ISSUE.

THE MONTHLY ALLOTMENT PREMIUM IS \$17.26

THIS POLICY IS IN A STANDARD PREMIUM CLASS

Major General Bowen, Jr. USAF Ret'd
 2002 W. Wood Ave.
 Columbus, Ga. 31906

ORDINARY LIFE POLICY WITH DOUBLE PROTECTION DURING FIRST TWENTY YEARS

Insurance Payable at Death - Annual Dividends - Premiums Payable During Life

Dividends may be Applied to Shorten the Premium Paying Period

UNITED SERVICES LIFE INSURANCE COMPANY, WASHINGTON, D. C.

Upon receipt at its Home Office of due proof of the death of the Insured while this policy is in force the Company will pay to the beneficiary the initial face amount of this policy if the Insured dies prior to the twentieth policy anniversary; or the ultimate face amount if the Insured dies on or after the twentieth policy anniversary.

This is a participating policy and at the end of the second and each succeeding policy year it shall be credited with such share of the surplus funds of the Company as may be apportioned by the Board of Directors.

This insurance is granted in consideration of the application therefor and the payment of the premiums as herein provided during the life of the Insured.

The provisions and benefits hereinafter set forth are hereby made a part of this policy.

IN WITNESS WHEREOF, the United Services Life Insurance Company has caused this policy to be signed at Washington, D. C., as of the date of issue from which date policy years and anniversaries shall be computed.

Robert C. Stearns
 Secretary

W. B. Bowen
 President

ANNUAL DIVIDENDS. This is a participating policy and at the end of the second and each succeeding policy year it shall be credited with each share of the surplus funds of the Company as may be determined by the Board of Directors. Each dividend so apportioned, at the option of the Owner, shall be

- (1) paid in cash; or
- (2) applied in reduction of premium; or
- (3) left with the Company to accumulate at interest at a rate not less than two and one-half per cent per annum, payable at maturity or on demand; or
- (4) used to purchase a participating paid-up addition to the face amount.

Any election on the application or by subsequent request shall be made at the next annual election in made, and if no election is in effect it shall automatically apply.

PAID-UP OPTION. Whenever the cash value of this policy, as determined in the section titled Guaranteed Values, equals or exceeds the net single premium at the then attained age of the Insured, computed according to the Commissioners 1954 Standard Ordinary Mortality Table with interest at the rate of 3½% per annum, for a paid-up policy of the same kind and amount, the policy will, upon written request of the Owner, become a fully paid-up participating policy. If such cash value exceeds the net single premium, the difference will be paid to the Owner in cash. In the event this Paid-up Option is exercised, the reserves and cash values for this policy will thereafter be computed according to the Commissioners 1954 Standard Ordinary Mortality Table with interest at the rate of 3½% per annum, any provision of this policy to the contrary notwithstanding.

PROOF OF DEATH AND IMMEDIATE PAYMENT. The amount due under this policy is payable immediately upon receipt of due proof of the death of the Insured and upon surrender of this policy, both at the Home Office of the Company. However, upon receipt of certification from the proper agency of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, or Public Health Service of the death of the Insured, the Company, upon proper application, will make a partial payment by wire, express, or other speedy conveyance, of one-half (½) of the amount due under the terms and conditions of this policy up to but not to exceed the sum of one thousand five hundred dollars (\$1,500.00).

THE CONTRACT. This policy and the application therefor shall constitute the entire contract between the Owner and the Company. All statements made in the application shall, in the absence of fraud, be deemed representations and not warranties. No such statement shall bind this policy or be used in defense of a claim hereunder unless it is contained in a written application and a copy of such application was attached to the policy when issued.

OWNERSHIP. The policy Owner designated on the first page hereof, without the consent of any revocable beneficiary, may exercise all the rights and privileges of ownership, subject to subsequent assignment or transfer. If a person other than the Insured is the Owner and such Owner dies, the Insured shall then become the Owner unless a contingent Owner has been named either on the first page or in an endorsement hereon.

POLICY LOANS. While this policy is in force, except as extended term insurance, the Company will lend on sole security thereof, with interest at the rate of five per cent per annum, a sum not greater than its cash value deducting therefrom interest in advance to the end of the current policy year. Interest thereafter shall be due at the beginning of each policy year and if not paid when due, it shall be added to the principal and bear interest at the same rate. If at any time the entire indebtedness outstanding, including any interest due or accrued, equals or exceeds the cash value of this policy had there been no indebtedness, the policy shall become null and void but not until thirty-one days after notice shall have been mailed by the Company to the last known address of the Owner and of any assignee of record at the Home Office.

AUTOMATIC PREMIUM LOAN. If requested in the application for this policy, or if a satisfactory written request is received at the Home Office of the Company while there is no premium in default or within the days of grace allowed for the payment of any premium in default, and request is unrevoked, any premium not paid at the expiration of the grace period shall be automatically charged as a loan against the policy, subject to the provisions entitled "Policy Loans", with interest from the due date of the premium, provided that the loan value be sufficient so to do. If the loan value is not sufficient to pay the premium due, the Company will apply the available loan value to pay the premium and interest for a proportionate period. The word "premium" as used in this clause comprehends the entire premium under the policy.

PAYMENT OF SURRENDER AND LOAN VALUE. The payment of any cash surrender or loan value may be made upon request but, except for the payment of premiums, may be deferred by the Company for six months after application therefor is made. Any such loan will bear interest during any deferred period of thirty days or more at the rate of 2½% per annum.

INDEBTEDNESS. Any indebtedness to the Company on account of this policy will be deducted from any settlement hereunder.

MODIFICATION OF POLICY. No change, modification or waiver of any of the provisions of this policy shall be binding upon the Company unless made in writing and signed by the President, a Vice President, the Secretary, or an Assistant Secretary of the Company. The Company shall not be bound by any promise or representations heretofore or hereafter made by any agent or person other than the above.

PAYMENT OF PREMIUMS. Premiums hereon are payable in advance at the Home Office of the Company in the City of Washington, District of Columbia or to an authorized agent, upon delivery of the Company's receipt therefor, signed by the President or Secretary and countersigned by such authorized agent. Premiums may be paid annually, semi-annually, quarter-annually, monthly or by monthly allotment at the rates in use by the Company on the date of issue of this policy. The payment of an annual, semi-annual, quarter-annual or monthly (or monthly allotment) premium will maintain this policy in force for one year, six months, three months or one month, respectively. Such periods will be deemed to expire and the next premium shall fall due on the same day of the month on which the first premium is due. Failure to pay any premium when due shall cause this policy immediately to become void except as otherwise provided herein. The mode of premium payment may be changed by the Owner at any time.

GRACE PERIOD. A grace period of 31 days will be allowed for the payment of any premium subsequent to the first, during which time the unpaid premium shall be considered an indebtedness to the Company and the policy will remain in full force.

MISSTATEMENT OF AGE. If the age of the Insured has been misstated, the amount payable under this policy shall be such as the premium would have purchased at the correct age.

INCONTESTABILITY. This policy shall be incontestable after it has been in force during the lifetime of the Insured for a period of two years from its date of issue, except for non-payment of premiums.

SUICIDE. If within two years from the date of issue of this policy the Insured shall commit suicide, whether sane or insane, the liability of the Company shall be limited to an amount equal to the premiums paid on this policy, without interest.

ASSIGNMENT. No assignment of this policy shall be binding upon the Company until the original or a duplicate thereof shall be filed at its Home Office but in no case will the Company be responsible for the sufficiency or the validity of any assignment.

REINSTATEMENT. This policy, if not previously surrendered for cash and if the extended term insurance has not expired, may be reinstated at any time within five years from the due date of any premium in default upon receipt of evidence satisfactory to the Company of the insurability of the Insured together with the payment of all premium arrears with interest from the due date of unpaid premiums at five per cent per annum compounded annually, and the payment or reinstatement of all indebtedness existing against the policy at the time of such default with interest at five per cent per annum compounded annually.

BENEFICIARY. Unless otherwise provided, any beneficiary named herein may be changed at any time on written notice thereof filed at the Home Office of the Company. Such change shall be recorded by the Company and upon such recording the change will relate back to and take effect as of the date said written notice of change was signed whether the Insured be living at the time of such recording or not, but without prejudice to the Company on account of any payment made by it before receipt of such written notice at its Home Office. If more than one beneficiary shall survive the Insured, their shares in the proceeds of the policy shall be considered equal unless otherwise directed. The interests of any beneficiary who dies before the Insured shall vest in the Owner unless otherwise provided herein or by endorsement on this policy. To the extent permitted by law, the proceeds hereof after the death of the Insured shall not be subject to transfer or encumbrance by any beneficiary and shall not be subject to the claims of creditors of any beneficiary or to any legal process against any beneficiary. If no beneficiary or contingent beneficiary should survive the Insured, the proceeds of this policy shall be payable to the executors, administrators or assigns of the Owner.

RESERVE. The aggregate reserve liability maintained by the Company on policies of this class shall be the aggregate reserves on such policies computed upon the basis of the Commissioners 1954 Standard Ordinary Table of Mortality with 2½% interest in accordance with the Commissioners Reserve Valuation Method.

GUARANTEED VALUES

may, within sixty days from the due date of any premium in default, elect one of the following nonforfeiture values to be in effect as of the due date of the premium in default:

CASH SURRENDER VALUE. Option (1)—To surrender this policy for its cash value; or

REDUCED PAID-UP INSURANCE. Option (2)—To continue this policy as paid-up participating life insurance of a reduced amount equal to the sum at the same time and under the same conditions as this policy.

EXTENDED TERM INSURANCE. Option (3)—To continue this policy as extended term insurance from the due date of the premium in default. (Not available if the policy is in a Special Premium Class.)

The cash value of this policy shall be the tabular cash value as shown in the table of nonforfeiture values, increased by the then present value of any existing paid-up additions and accumulated dividends and decreased by any indebtedness to the Company on account of the policy. The amount of paid-up insurance shall be such as the cash value will purchase when applied as a net single premium at the attained age of the insured. The amount of any extended term insurance in force prior to the twentieth policy anniversary shall be the initial face amount increased by any paid-up additions and the amount of any dividend accumulations and decreased by any indebtedness. The amount of any extended term insurance in force on and after said twentieth policy anniversary shall be the initial face amount increased by any paid-up additions and the amount of any dividend accumulations and decreased by any indebtedness. The term of extended insurance shall be such as the cash value will purchase when applied as a net single premium at the attained age of the insured. If this policy be not surrendered within 60 days from the due date of the premium in default, option (1) shall automatically apply if the policy is in a standard premium class, otherwise option (2) shall automatically apply. In the event of the death of the insured, occurring after the expiration of the grace period, but within 60 days after the due date of the premium in default, and no option has been elected, the amount payable hereunder shall be the same as if option (3) had been elected, provided the policy is in a standard premium class, otherwise the amount payable hereunder shall be the same as if option (2) had been elected. Paid-up and extended insurance may be surrendered at any time

for a cash value which shall be equal to the present value of such paid-up or extended insurance at date of surrender. The cash value of paid-up or extended insurance surrendered within 30 days of a policy anniversary shall be not less than the cash value as of such anniversary.

COMPUTATION OF NONFORFEITURE VALUES. The tabular cash value on any policy anniversary is calculated by the Standard Nonforfeiture Value Method and is taken to the higher dollar. The nonforfeiture factor per \$1,000 of initial amount of insurance is shown in the Table of Nonforfeiture Values but on and after the 20th policy anniversary the cash value is equal to the reserve calculated according to the Commissioners Reserve Valuation Method. Complete details of the method of calculation are on file with the Insurance Supervising official of the state, district or territory in which this policy is issued. Tabular Cash Values shall take no account of indebtedness, paid-up additions, dividend accumulations, and supplementary benefits provided by rider provisions attached to and forming a part of this policy. The cash surrender value and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to any statute of the state, district or territory in which the policy is delivered. All net single premiums, present values and nonforfeiture values shall be computed according to the Commissioners 1954 Standard Ordinary Mortality Table with interest at the rate of 2 1/4% per annum and assuming that deaths occur at the end of the policy year; provided, however, that in computing extended term insurance the basis is the Commissioners 1954 Extended Term Insurance Table with 2 1/4% interest. The net value of any paid-up additions shall be not less than the dividends used to purchase such additions.

NONFORFEITURE VALUES. The following table shows the paid-up insurance and the loan or cash surrender value for each \$1,000 of initial face amount and the period of extended term insurance for any face amount of this policy upon the assumption that premiums have been fully paid in cash for the completed years stated, that there are no paid-up additions nor accumulated dividends, and that there is no indebtedness to the Company on the policy. If premiums have been paid to a date within the first policy year for which values are shown in the table, the values as of such date shall be calculated with allowance for the premiums paid. Values for intermediate periods will be proportionately increased and for later years will be furnished upon request.

TABLE OF NONFORFEITURE VALUES

The values applying to this policy are fixed by the age of the insured as stated on the first page hereof.
EXTENDED TERM INSURANCE IS NOT AVAILABLE IF THE POLICY IS IN A SPECIAL PREMIUM CLASS

End of Year	AGE AT ISSUE—15				AGE AT ISSUE—17				AGE AT ISSUE—19				AGE AT ISSUE—20				End of Year
	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	
1	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	1
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
4	0	10	1	78	4	13	1	219	4	13	1	212	4	13	1	204	4
5	0	28	3	87	8	26	3	75	9	28	3	214	9	28	3	202	5
6	12	38	4	321	13	40	5	82	14	43	5	223	15	45	5	345	6
7	17	53	4	347	18	55	7	104	19	54	7	216	20	58	7	318	7
8	22	67	8	359	23	69	9	93	24	70	9	179	25	71	9	245	8
9	27	80	10	355	28	81	11	84	29	82	11	116	31	86	11	363	9
10	32	93	14	325	33	94	14	300	35	97	18	71	36	98	14	322	10
11	37	105	17	278	39	108	17	330	40	109	17	173	42	112	17	144	11
12	42	119	20	91	44	120	19	264	46	122	19	191	48	125	19	84	12
13	47	130	21	260	50	123	21	149	52	125	21	13	54	128	20	213	13
14	52	141	22	293	55	125	22	135	57	126	22	324	60	130	21	219	14
15	57	153	23	322	61	128	23	124	63	127	23	277	64	131	22	132	15
16	62	165	24	253	67	127	24	27	69	128	23	150	72	132	22	340	16
17	67	174	25	30	73	128	24	221	75	131	24	33	78	132	23	123	17
18	72	185	25	198	79	129	24	364	82	132	24	161	85	134	23	295	18
19	77	196	25	312	85	129	25	94	88	131	24	232	91	134	24	0	19
20	82	208	26	24	91	128	25	156	94	130	24	284	97	133	24	44	20
21	87	219	18	33	96	127	17	339	99	129	17	282	100	135	17	225	21
22	92	231	15	318	101	126	15	265	102	128	15	212	103	137	15	159	22

36-112-2

Nonforfeiture Factor

36-37063

Nonforfeiture Factor

36-40946

Nonforfeiture Factor

36-42303

TABLE OF NONFORFEITURE VALUES

EXTENDED TERM INSURANCE IS NOT AVAILABLE IF THE POLICY IS IN A SPECIAL PREMIUM CLASS

End of Year	AGE AT ISSUE—20				AGE AT ISSUE—21				AGE AT ISSUE—22				AGE AT ISSUE—23				End of Year
	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	
1	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	1
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
3	0	0	0	0	0	0	0	0	1	0	140	1	0	0	0	0	3
4	5	16	1	346	5	18	1	339	6	18	2	108	7	20	2	129	4
5	10	30	3	334	11	32	4	94	12	34	4	212	13	36	4	231	5
6	15	44	5	311	16	46	6	83	17	47	6	181	18	40	6	246	6
7	21	60	8	22	22	51	8	114	22	52	8	106	23	47	8	311	7
8	27	78	11	28	28	74	10	86	28	77	10	97	29	51	10	34	8
9	34	101	14	348	40	104	12	33	41	106	14	97	42	107	12	236	9
10	44	115	17	73	48	117	16	330	48	120	16	184	50	122	16	11	10
11	50	127	18	311	52	130	18	142	54	132	17	315	54	134	17	97	11
12	56	140	20	29	58	142	19	183	61	146	19	46	63	147	18	100	12
13	62	151	21	0	65	145	20	208	67	157	19	217	70	149	19	125	13
14	68	162	21	3	71	146	21	65	74	160	20	229	77	152	20	17	14
15	75	175	22	143	78	178	21	300	80	179	21	14	83	155	20	180	15
16	81	185	22	375	84	188	22	51	87	181	21	184	90	159	20	313	16
17	87	197	23	65	91	199	22	193	94	192	21	318	97	164	21	74	17
18	94	206	23	125	97	204	22	243	100	210	22	8	103	212	21	123	18
19	100	215	23	164	104	219	22	336	107	220	22	87	110	222	21	303	19
AGE																	
60	250	382	17	140	257	379	17	83	254	376	16	363	251	370	16	283	60
65	250	408	17	106	256	406	17	53	254	403	16	0	251	399	14	293	65
Nonparticipating Factors: 36.81230																	
Nonparticipating Factors: 37.01225																	
Nonparticipating Factors: 37.31991																	
Nonparticipating Factors: 37.42883																	

TIME 2

End of Year	AGE AT ISSUE—24				AGE AT ISSUE—25				AGE AT ISSUE—26				AGE AT ISSUE—27				End of Year
	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	
1	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	1
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
3	2	6	0	274	2	6	0	270	3	9	1	32	3	8	1	25	3
4	7	20	2	220	8	22	2	337	9	24	3	84	10	28	3	188	4
5	13	36	4	286	14	38	5	17	15	30	6	98	16	41	5	746	5
6	20	53	7	45	21	55	7	100	22	56	7	110	22	58	7	96	6
7	28	68	8	302	27	69	8	269	29	73	8	309	30	73	8	230	7
8	32	80	10	26	34	85	10	29	36	88	10	0	37	89	9	229	8
9	37	97	11	159	41	100	11	49	43	104	10	519	46	106	10	239	9
10	45	110	13	313	47	112	13	38	50	117	12	313	52	119	12	33	10
11	52	124	15	172	54	126	14	313	57	131	14	186	59	132	13	374	11
12	59	138	16	321	61	140	16	66	64	143	15	249	67	147	15	54	12
13	64	151	17	348	68	152	17	72	71	156	16	232	74	159	16	19	13
14	73	163	18	285	75	164	18	1	78	167	17	143	81	170	16	280	14
15	80	175	19	158	82	176	18	230	85	179	17	364	88	181	17	126	15
16	86	185	19	285	89	187	19	49	92	189	18	173	96	192	17	396	16
17	93	196	20	73	96	198	19	194	99	200	18	315	103	202	18	67	17
18	100	206	20	193	103	208	19	311	104	309	19	62	109	211	18	177	18
19	107	216	20	281	110	217	20	69	113	219	19	182	116	220	18	267	19
20	113	223	20	318	116	225	20	69	119	226	19	184	122	227	18	303	20
AGE																	
60	248	344	16	301	245	342	16	120	241	346	16	12	237	380	15	274	60
65	289	396	14	244	286	392	14	170	293	388	14	97	290	384	14	24	65
Nonparticipating Factors: 37.07252																	
Nonparticipating Factors: 37.02214																	
Nonparticipating Factors: 36.19760																	
Nonparticipating Factors: 36.49864																	

End of Year	AGE AT ISSUE—28				AGE AT ISSUE—29				AGE AT ISSUE—30				AGE AT ISSUE—31				End of Year
	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	Cash or Loan Values	Paid Up Life Insurance	Extended Insurance Years	Days	
1	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	\$ 0	\$ 0	0	0	1
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
3	4	11	1	146	4	11	1	135	5	13	1	245	5	13	1	229	3
4	10	26	3	157	11	28	3	238	12	30	3	259	13	31	3	334	4
5	18	45	5	303	19	47	5	306	20	48	5	284	21	49	5	344	5
6	25	61	7	150	26	62	7	87	28	66	7	90	29	67	7	0	6
7	32	77	8	217	34	80	8	182	35	86	8	63	37	83	8	5	7
8	39	91	9	176	41	94	9	101	43	97	9	16	45	99	9	285	8
9	47	108	10	117	49	110	10	7	51	112	9	263	53	114	9	132	9
10	54	121	11	198	57	125	11	39	59	127	10	128	61	128	9	328	10
11	62	136	13	93	64	138	12	177	67	141	11	340	70	144	11	122	11
12	69	148	14	133	72	151	13	284	75	155	12	60	77	155	12	124	12
13	77	162	15	169	80	165	14	294	82	165	13	380	85	168	13	116	13
14	84	173	16	47	87	176	15	171	90	178	14	291	93	180	14	41	14
15	91	184	16	249	94	186	16	74	97	188	15	118	101	192	14	278	15
16	99	196	17	90	102	198	16	211	105	199	15	323	108	201	15	66	16
17	106	208	17	238	109	207	16	341	112	209	16	85	115	210	15	195	17
18	112	213	17	293	116	216	17	82	119	217	16	193	122	218	16	307	18
19	119	222	18	18	122	223	17	133	125	224	16	250	128	225	16	6	19
20	126	230	18	94	129	231	17	214	131	230	16	381	134	226	16	63	20
AGE																	
60	233	344	16	171	229	338	16	68	224	331	14	306	220	335	14	300	60
65	277	380	13	319	273	374	13	228	269	380	13	138	265	383	13	67	65
Nonparticipating Factors: 36.77385																	
Nonparticipating Factors: 37.07619																	
Nonparticipating Factors: 36.48975																	
Nonparticipating Factors: 36.81264																	

Application for Insurance
UNITED SERVICES LIFE INSURANCE COMPANY
Washington, D. C.
(U.S. ARMY ONLY)

1. Name Print in full CHARLES LIGHTFORD SWANN		16. If participating, dividends shall be <input checked="" type="checkbox"/> Used to shorten the premium paying period of the policy by use of paid-up additions. <input type="checkbox"/>																			
2. Rank LT USAF PO 173492		17. Are you now a pilot? Yes If "yes" are you likely to make any flights during the next 12 months in lighter-type aircraft? Yes																			
3. Present Occupation or Duty Assignment Weapons Control Officer		18. Are you now a student pilot? No If not, have you applied, or do you expect to apply for flight training as a pilot? Yes																			
4. Military or Business Address 4624 Support Bldg X 544 HANSECK FIELD, SYCAMORE, ILL		19. Are you now or do you expect to become an enlisted crew member other than pilot? No																			
5. Present Mailing Address TYNDALL AFB, FLD 32440		20. Have you ever been declined or postponed for life, health, or accident insurance, or re-insurance thereof, or offered a policy other than as applied for? Yes (If "yes", give details in No. 22)																			
6. Permanent Mailing Address 333 NORTH EAST ST. PLAINFIELD, IND.		21. Is an application for insurance or application for reinstatement now pending with any company? No (If "yes", give details in No. 22)																			
7. Place of Birth—City and State INDIANAPOLIS, IND JUN 16 '43		22. Will any insurance in this or any other company be discontinued if the policy herein applied for is issued? No (If "yes", give details in No. 22)																			
8. Social Security Number 7-9 44 2620		23. Explanations and Special Reasons																			
10. Date of issue desired (a) <input type="checkbox"/> Date policy issue date this application is approved. (b) <input type="checkbox"/> Date policy to term insurance age. (c) <input checked="" type="checkbox"/> Date policy should be 1 MAR '47		11. Age at Date of Issue 24																			
12. Insurance Applied for <input checked="" type="checkbox"/> Participating <input type="checkbox"/> Non-Participating POWER RATED PLAN 20		13. Premium <input checked="" type="checkbox"/> Allowment																			
Amount \$ 20,000		17 26																			
<input type="checkbox"/> Waiver of Premium Rider																					
<input type="checkbox"/> Accidental Death Rider 2																					
<input type="checkbox"/> Family Protector Rider		(Units)																			
<input type="checkbox"/> Family Security Rider (AID-30)		(Units)																			
<input type="checkbox"/> Family Security Rider (AID to 60)		(Units)																			
<input type="checkbox"/> Premium Protector Rider		(Units)																			
<input type="checkbox"/> Security Protector Rider 3																					
<input type="checkbox"/> Quarter's Protector 3																					
<input type="checkbox"/> Basic Accident Premium																					
<input type="checkbox"/> Guaranteed Insurability Rider (GIR) 5																					
<input checked="" type="checkbox"/> Automatic Premium Loan Provision <input type="checkbox"/> Five day Cancellation Provision		Total \$ 17 26																			
14. The Owner is (a) <input checked="" type="checkbox"/> The applicant (b) <input type="checkbox"/> Other than applicant give full name and address.																					
15. Beneficiary (give full name and relationship. If married woman, give maiden name.) TERESA KUELS SWANN wife of the applicant, if living, otherwise the children born of the marriage of, or adopted by, the applicant and said wife, or the survivor.		24. List all life insurance in force on your life.																			
		<table border="1"> <thead> <tr> <th>COMPANY</th> <th>AMOUNT</th> <th>ACCIDENTAL DEATH BENEFIT</th> </tr> </thead> <tbody> <tr> <td>SCOTT</td> <td>10,000</td> <td></td> </tr> <tr> <td>NY LIFE</td> <td>5,000</td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>		COMPANY	AMOUNT	ACCIDENTAL DEATH BENEFIT	SCOTT	10,000		NY LIFE	5,000										
COMPANY	AMOUNT	ACCIDENTAL DEATH BENEFIT																			
SCOTT	10,000																				
NY LIFE	5,000																				
25. Amount paid with this application None																					

☐ Married ☐ Widowed
 Date of birth: 1934 year
 Education of treatment recommended as a: None

30. Have you ever had or been treated for cancer, diabetes, heart disease, high blood pressure or tuberculosis? None
 If "yes", give date and full details, including names and addresses of doctors.

31. Have you been associated with a tuberculosis person within the past twelve months? None
 If "yes", is association continuing?

32. Has your weight changed in the past twelve months? Yes
 Gain 175 lbs. Loss 0 lbs. Cause None

33. Weight (clothed, except for coat) 175
 34. Exact height in shoes 6 feet 1 1/2

35. Family record

	AGE AT BIRTH	AGE AT DEATH	CAUSE OF DEATH
Father	50		
Mother	46		
Brothers			
Number living	0		
Number dead	0		
Sisters			
Number living	1	24	
Number dead	0		

When Applicant is a Woman the Following Must Be Answered

36. Name of Husband N/A
 37. His Rank None Arm of Service None Service Number None
 38. Amount of insurance now in force on husband's life, \$ 0

All statements and answers in this application are made by me to obtain the insurance hereby applied for and are complete, true and correct, and I request and ask the Company to accept and rely on them.
 I agree that my benefits and/or amount to this application shall take effect at 12 o'clock noon, Eastern Standard Time, on the date of such approval by the Company or its Home Office or on the date designated by me in Part C of Question No. 10, whichever is the later date, provided that I am then still insurable to such insurance according to the Company's standards and practices.

Dated at Tampa, FLA. on 10th day of January 1962
Charles R. Green
 APPLICANT'S SIGNATURE

OPTIONAL SETTLEMENT PROVISIONS

ELECTION OF SETTLEMENT OPTION. The net cash surrender value of this policy or the amount payable to the beneficiary under this policy upon the death of the Insured may be applied under the following options. Election of the options may be made while the Insured is living by written direction for settlement duly filed with and approved by the Company. If not so made, the beneficiary after the death of the Insured may elect to receive the proceeds of this policy under one or more of said options when such proceeds become payable to such beneficiary in a single sum and may designate (with the right to change such designation) a person or persons to receive any amount remaining unpaid at the death of the beneficiary.

INTEREST INCOME. Option (a)—The payment of interest at the rate of not less than two and one-half per cent per annum of the amount left with the Company as a principal sum. At the death of the payee or at the end of the period agreed upon in the election of this option, the amount then retained, with accrued interest, shall be paid in one sum unless otherwise agreed upon with the Company.

LIMITED INSTALLMENTS. Option (b)—The payment of a specified number of equal monthly installments, in accordance with the Table of Settlement Options shown in the policy.

CONTINUOUS INSTALLMENTS. Option (c)—The payment of equal monthly installments with a specified number of months certain and to continue thereafter so long as the payee shall live, in accordance with the Table of Settlement Options shown in the policy. Payment under this option shall be subject to satisfactory proof of the age of the payee.

SPECIFIED INSTALLMENTS. Option (d)—The payment of equal monthly or other periodic installments of a specified amount until the net proceeds of this policy together with the interest thereon are exhausted. Interest of not less than two and one-half per cent per annum on the amount of proceeds remaining with the Company during the preceding period of twelve months shall be added to the unpaid balance of such proceeds on each anniversary of the payment of the first installment.

DATE OF INSTALLMENT PAYMENTS. The first installment due under options (b), (c), or (d) shall be payable immediately and subsequent installments on the corresponding day of succeeding months or periods.

INTEREST DIVIDENDS. There shall be added to the minimum rate of interest specified under options (a) or (d) and to the payment specified under options (b) or (c) such interest dividends as may be apportioned by the Company provided that under option (c) such dividends shall be payable only during any period certain.

COMMUTATION OF INSTALLMENTS. Unless otherwise specified, a payee shall not have the right to anticipate, commute, assign or encumber any of the payments due or to become due. To the extent permitted by law, neither such payments nor the amount retained by the Company shall be subject to the claims of any creditors of any payee but shall be free from the interference or control of any such creditor. When the right to anticipate or commute is given to a payee, it may apply to the unpaid remainder of principal sum and accrued interest under options (a) or (d) and to the unpaid balance of the installments under option (b), but no commutation of installments under option (c) shall be permitted. Payment may be deferred by the Company for the period permitted by law but not exceeding six months after application therefor is made. Any commutation of installments shall be upon the basis of two and one-half per cent per annum compound interest.

WHEN SETTLEMENT OPTIONS ARE NOT AVAILABLE. The settlement options shall not be available for any of the proceeds of this policy which are payable to a corporation, firm, association, executor, administrator, or trustee, or to any assignee, or if the amount to be applied under any option is less than \$1,000 for each payee or insufficient to purchase a periodic payment of at least \$10 for such payee under the option elected. The settlement options shall not be available to any person other than the Insured upon the maturity or surrender of this policy during the lifetime of the Insured, or to anyone other than the beneficiary after the death of the Insured, any assignment or direction to the contrary notwithstanding.

If the policy is assigned as collateral security to some person, firm or corporation other than the Company, any agreement as to the amount to be paid to said assignee, made by said assignee and the beneficiary or beneficiaries designated to receive the first payment on account of the proceeds of said policy shall be binding on the remaining beneficiaries.

TABLE OF SETTLEMENT OPTIONS FOR EACH \$1,000 OF PROCEEDS APPLIED

Under option (b)		Under option (c)—continuous installments														
No. of Monthly Installments	Amount of Monthly Installments	Attained Age of Payee		Amount of Monthly Installment			Attained Age of Payee		Amount of Monthly Installment			Attained Age of Payee		Amount of Monthly Installment		
		Male	Female	No. Mos. Certain			Male	Female	No. Mos. Certain			Male	Female	No. Mos. Certain		
				120	180	240			120	180	240			120	180	240
12	\$84.28	11 & under	10 & under	\$2.73	\$2.72	\$2.71	36	41	\$3.53	\$3.50	\$3.45	61	66	\$3.74	\$3.50	\$4.00
24	42.06	12	17	2.74	2.74	2.73	37	42	3.59	3.55	3.50	62	67	3.67	3.39	4.00
36	28.79	13	18	2.75	2.75	2.75	38	43	3.64	3.60	3.54	63	68	3.61	3.46	4.00
48	21.88	14	19	2.76	2.76	2.77	39	44	3.70	3.65	3.59	64	69	3.16	3.56	4.04
60	17.76	15	20	2.81	2.80	2.79	40	45	3.76	3.71	3.64	65	70	3.30	3.66	4.08
72	14.83	16	21	2.83	2.82	2.81	41	46	3.82	3.77	3.69	66	71	3.45	3.73	3.62
84	12.95	17	22	2.85	2.84	2.84	42	47	3.88	3.82	3.74	67	72	3.60	3.82	3.65
96	11.47	18	23	2.86	2.87	2.86	43	48	3.95	3.88	3.79	68	73	3.75	3.90	3.69
108	10.32	19	24	2.90	2.89	2.88	44	49	4.02	3.96	3.84	69	74	3.91	3.97	3.12
120	9.38	20	25	2.93	2.92	2.91	45	50	4.09	4.01	3.90	70	75	3.97	4.04	3.14
132	8.64	21	26	2.96	2.95	2.93	46	51	4.17	4.08	3.98	71	76	3.73	4.12	3.17
144	8.02	22	27	2.98	2.97	2.96	47	52	4.23	4.13	4.01	72	77	3.78	4.18	3.19
156	7.46	23	28	3.01	3.00	2.99	48	53	4.30	4.22	4.07	73	78	3.54	4.24	3.20
168	7.03	24	29	3.04	3.03	3.02	49	54	4.42	4.30	4.12	74	79	3.69	4.30	3.22
180	6.64	25	30	3.08	3.07	3.06	50	55	4.50	4.37	4.16	75	80 & over	3.84	4.35	3.23
192	6.36	26	31	3.11	3.10	3.08	51	56	4.60	4.44	4.24	76		3.96	4.39	3.24
204	6.09	27	32	3.14	3.13	3.11	52	57	4.69	4.52	4.30	77		4.13	4.43	3.25
216	5.79	28	33	3.16	3.17	3.15	53	58	4.79	4.60	4.36	78		4.28	4.47	3.26
228	5.49	29	34	3.22	3.20	3.18	54	59	4.90	4.69	4.41	79		4.39	4.50	3.28
240	5.27	30	35	3.26	3.24	3.22	55	60	5.01	4.77	4.47	80 & over		4.51	4.53	3.27
252	5.06	31	36	3.30	3.28	3.26	56	61	5.12	4.86	4.53					
264	4.90	32	37	3.34	3.32	3.29	57	62	5.23	4.94	4.59					
276	4.74	33	38	3.36	3.36	3.33	58	63	5.35	5.03	4.64					
288	4.60	34	39	3.43	3.41	3.37	59	64	5.46	5.12	4.70					
300	4.46	35	40	3.46	3.45	3.41	60	65	5.61	5.31	4.73					

If so requested in the written notice of election, settlements under any of the settlement options will be made in equivalent annual, semi-annual, or quarter-annual installments.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

✓ **CHANGE OF PLAN.** This policy may be changed at any time to another plan of insurance requiring a higher annual premium payment, exclusive of premiums for any supplemental benefits, in an amount not exceeding the initial face amount of this policy. Any change shall be subject to such requirements and payment of costs, if any, as the Company may determine, but evidence of insurability will not be required if the change is made prior to the fifteenth policy anniversary.

ORDINARY LIFE POLICY WITH DOUBLE PROTECTION DURING FIRST TWENTY YEARS

Insurance Payable at Death • Annual Dividends • Premiums Payable During Life

Dividends may be Applied to Shorten the Premium Paying Period

UNITED SERVICES LIFE INSURANCE COMPANY, WASHINGTON, D. C.



APPELLATE'S BRIEF
AND SUPPLEMENTAL APPENDIX

IN THE

United States Court of Appeals

For the District of Columbia Circuit

No. 24,486

JOSEFA WELLS SWANN, Appellant,

United States Life Insurance Company, Appellee.

On Appeal from a Judgment of the United States
District Court for the District of Columbia

United States Court of Appeals
For the District of Columbia Circuit

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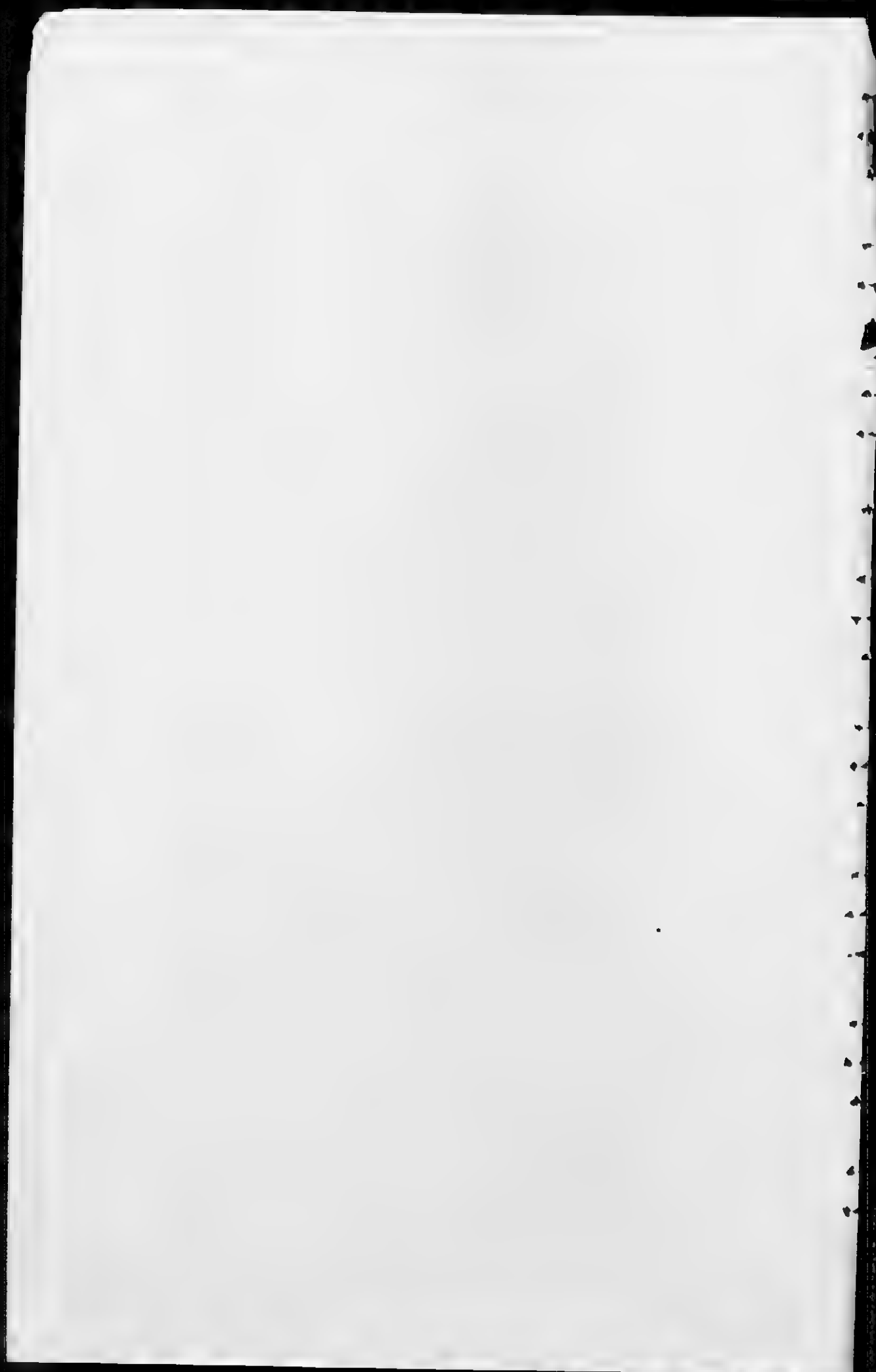


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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,486

JOELENA WELLS SWARN, *Appellant*,

v.

UNITED SERVICES LIFE INSURANCE COMPANY, *Appellee*.

On Appeal from a Judgment of the United States
District Court for the District of Columbia

**APPELLEE'S BRIEF
AND SUPPLEMENTAL APPENDIX**

COUNTER STATEMENT OF THE CASE

This appeal arises from the denial by the District Court of appellant's claim for the proceeds of a life insurance policy issued by the appellee (insurance company) upon the life of appellant's husband, Charles L. Swarn, deceased, a Lieutenant in the United States Air Force. Appellant was the named beneficiary of the policy.

The completed application for the policy contained certain printed questions and hand written answers and was signed by Lt. Swarn on January 10, 1967. At his written request, the policy was to become effective March 1, 1967. Lt. Swarn died on August 22, 1967.

In the body of the application, the following questions were asked, and the following answers were provided by Lt. Swarn:

"27 (a) Date of your latest service physical examination." Answer "September, 1964."

"(b) Details of any hospitalization, medication or treatment recommended as a result thereof. If none, so state." Answer "None."

"28. Name all other physicians and practitioners you have consulted or who have examined or treated you within the last five years. State for what conditions or purposes. Give dates and full details. If none, so state." Answer "None."

• • •

"30. Are you now to the best of your knowledge and belief in good health and free from defect or deformity?" Answer "Yes." (J.A. 114a).

Immediately preceding Lt. Swarn's signature on the policy, the following language appeared:

"All statements and answers in this application are made by me to obtain the insurance hereby applied for and are complete, true and correct, and I request and expect the company to accept and rely on them. I agree that any insurance approved pursuant to this application shall take effect at 12 o'clock noon, Eastern Standard Time, on the date of such approval by the company at its Home Office or on the date designated by me in Part C of Question No. 10 whichever is the later date, provided that I am then still insurable for such insurance according to the company's standards and practices." (J.A. 114a).

On October 13, 1966, approximately 90 days before signing the application for insurance, Lt. Swarn was first seen and examined by Dr. Mel Forman at sick call while stationed at Hancock Air Force Base, New York. His complaint to Dr. Forman was frequency of urination and occasional pain on urination for a period of several days (J.A. 4a). Dr. Forman testified that he examined Lt. Swarn with reference to the complaints, and ordered a urinalysis and urine culture (J.A. 4a). On the same day, he placed Lt. Swarn on an antibiotic to be taken four times daily (J.A. 5a). Lt. Swarn was told to return and, two weeks later, during his second visit, the antibiotic was continued for another two weeks (J.A. 5a). On November 7, 1966, a further urinalysis was performed and an analgesic prescribed to relieve urinary tract pain (J.A. 5a, 6a). On November 17, 1966, his fourth visit to Dr. Forman, the doctor did a complete blood count, urinalysis, urine culture, a blood urea-nitrogen, serum-creatinine, total serum proteins and albumin. The doctor did a rectal examination and felt a tender prostate gland (J.A. 6a). Since Lt. Swarn was being transferred to Tyndall Air Force Base, Florida, for temporary duty, his records were forwarded to that base by Dr. Forman (J.A. 6a), and he was told to report in at Tyndall for evaluation of his problem (J.A. 20a).

On November 30, 1966, after his arrival at Tyndall Air Force Base, Lt. Swarn was examined by a flight surgeon, Dr. Norman E. Jones, and again urine and blood samples were taken. Dr. Jones testified Lt. Swarn had told him he did not feel sick but he noticed red blood cells in his urine and there was some burning upon urination (J.A. 23a). The urinalysis showed 2-3 coarsely granulated casts; 0-1 finely granulated casts; 25-30 red blood cells; 15-20 white blood cells; 2+ bacteria and 4+ albuminuria (S.A. 10). Normally, there may be a trace of albumin in the urine, but the presence of blood and bacteria is abnormal (J.A. 8a). Upon his return to Dr. Jones on December 1, 1966, chest

and abdominal x-rays were taken. On the 14th of December, 1966, additional urine and blood samples were taken and laboratory studies revealed 8-12 white blood cells and 3-6 red blood cells (J.A. 28a). An intravenous pyelogram was performed (J.A. 23a), which consisted of injection of dye and the taking of sequential x-rays (J.A. 32a). On the 21st of December, 1966, Dr. Jones concluded that Lt. Swarn was suffering from glomerulonephritis and instructed him to report to the Department of Medicine for a kidney biopsy (J.A. 22a).

The examination by Dr. Jones on December 21, 1966, is the last examination of record prior to Lt. Swarn's completing and signing the application for the subject insurance policy on January 10, 1967, 20 days later.

On February 23, 1967, subsequent to the completion and signing of the application, but six days prior to the effective date of the policy (March 1, 1967), Lt. Swarn entered the Veterans Administration Hospital of New York in Syracuse. From that date forward until the date of his death, Lt. Swarn was confined to the hospital with the exception of weekends and the time required to transfer him from New York to Andrews Air Force Base Hospital (J.A. 72a).

The Underwriter for the insurance company, Verla Drebes, testified that applications for insurance which disclose no medical consultations, examinations or treatment, are routinely approved and forwarded. This was done with Lt. Swarn's application. She went on to say, however, that where the application indicates that the applicant has been recommended for hospitalization or treatment, has consulted with or been examined or treated by any physician or practitioner within five years preceding the application, or believes himself to be other than free from defect or deformity, the application is placed in a "pending" status. Under these circumstances, the records and diagnoses of examining physicians are requested, and a

medical examination is required. A request would also be made for two urinalysis reports (J.A. 84a, 85a). She further testified that had the company been furnished with the information disclosed by the testimony of Drs. Jones and Forman, and the laboratory studies made at their direction, the company would have declined Lt. Swarn's application (J.A. 89a). The Underwriter characterized the answers to questions 27(a) and (b), 28 and 30 as "very important" in determining whether or not the company will take the risk and insure the applicant (J.A. 84a).

Mr. Riley B. Carter, Vice-President in charge of underwriting for Peoples Life Insurance Company, corroborated the testimony of the Underwriter for the defendant company, stating that the procedure followed by it was normal underwriting procedure with respect to the issuance of a policy of life insurance (J.A. 97a).

The insurance company's medical director, Dr. Robert L. Howard, testified that when the application contains information that the applicant has consulted with or been treated by doctors or hospitals during the previous five years, medical records are always required, if available; if not, a report from the doctor or hospital administering the examination or treatment referred to in the application is required. He stated that if the requested information is not received, the policy is declined (J.A. 53a, 54a). Dr. Howard testified that if he were to receive, in connection with an application for insurance, a urinalysis disclosing the information contained in Lt. Swarn's November 30, 1966 urinalysis, he would reject the application in the absence of additional information (J.A. 54a); that if he had received information that the applicant was hospitalized prior to the effective date of the policy, the policy would be cancelled in the absence of further information concerning the hospitalization (J.A. 63a).

Upon the conclusion of testimony and oral argument, the District Court, sitting without a jury, issued its Findings

of Fact and Conclusions of Law in which it found for the defendant insurance company. It found, *inter alia*, that Lt. Swarn had knowledge of his condition, was aware of the tentative diagnosis, that he knew he was suffering from and was being treated for a serious disease of his genito-urinary tract when he made application with the defendant company (S.A. 4, 5). The Court concluded that Lt. Swarn's answers to questions 28 and 30 of the application were false and known by him to be false and that the answers to both questions are material to the risks assumed by the insurer and that the defendant company was entitled to avoid the policy of insurance it had issued upon Lt. Swarn's life. (S.A. 5).

ISSUES PRESENTED FOR REVIEW

I

Were the Findings of Fact of the District Court so clearly erroneous as to be set aside on appeal?

II

Whether defendant insurance company properly declined to pay to plaintiff, widow of insured, the proceeds of a policy of life insurance, where the application, signed by the insured, contained misrepresentations material to the risk.

III

Did the applicant's failure to notify the insurance company of his confinement to a hospital commencing five days prior to the effective date of the policy constitute sufficient cause for the insurer to refuse payment on the policy where the application clearly required that the applicant be insurable on the effective date of the policy?

ARGUMENT I

The Findings of Fact set forth by the District Court were clearly consistent with the testimony and the evidence presented at the hearing.

Rule 52(a), Federal Rules of Civil Procedure states, in part, as follows:

“* * * Finding of Fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witness * * *”

In the instant case, the District Court, sitting without a jury, observed witnesses for both plaintiff and defendant and read and considered the two depositions introduced into evidence. On occasion, the Court itself addressed questions to the witnesses.

“In an action such as this, tried by the court without the intervention of a jury, we are authorized to reverse the judgment of the District Court only if in our view the findings of fact were clearly erroneous or the law was incorrectly applied. The findings of fact are amply supported by the record and it seems to us that the law was correctly applied by the trial justice. It follows that the judgment cannot be disturbed.”
Glenn v. Kraft 82 U.S. App. D.C., 381 (1947).

ARGUMENT II

The completed application upon which the defendant insurance company relied in issuing a policy of life insurance contained material misrepresentations which vitiated the policy.

Title 35 § 414 D.C. Code, 1967 Edition, provides as follows:

“The falsity of a statement in the application for any policy of insurance shall not bar the right to recovery thereunder unless such false statement was made with intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the company.”

To avoid a life insurance policy on the ground of false representation, the answer must not only have been untrue, but it must have been made with reference to a material matter. Intent to deceive need not be shown where the misrepresentation is material to the risk.

In a case similar in many respects to that before this Court, *Kavakos v. Equitable Life Assurance Soc. of the U.S.*, 66 App. D.C. 380 (1936), the Court stated (at p. 381):

"As we have already pointed out, the undisputed evidence is that Kavakos was treated by physicians almost constantly for a period of two years immediately preceding the date of the application. This was a fact within his own knowledge, and his answer to the question was a material inducement to the insurance company to issue the policy. And, being false, it vitiated the policies 'without further proof of actual conscious design to defraud.'

There is no more settled rule—where there is no statute changing the common law rule—than that a misrepresentation in such circumstances as we have here is material as a matter of law, and in those cases in which it is shown, it is the duty of the Court to take the case from the jury."

The law in Maryland is the same. Judge Delaplaine stated the principle as follows:

"We specifically hold that a material misrepresentation by an applicant for life insurance in reliance upon which a policy is issued, avoids the policy, regardless of whether the misrepresentation was made intentionally or through mistake and in good faith, because it results in the assumption by the insurer of a risk different from that which the applicant led it to suppose it was assuming."

Silberstein v. Massachusetts Mutual Life Insurance Company, 189 Md. 182, 187, 55 A 2d 334, 337 (1947).

To the same effect see:

Stumpf v. State Farm Mutual 251 A 2d 362 (1968); *Nationwide Mutual Insurance Company v. McBriety*, 230 A 2d 81 (1967); *Life and Casualty Insurance Company of Tennessee v. Smith*, 436 S.W. 2d 97 (1969); *Walsh v. John Hancock Mutual Life Insurance Company*, 63 A 2d 472 (Pa.) (1949); *Kaitlin v. Metropolitan Life Insurance Company*, 65 A 2d 188 (1949); *Metropolitan Life Insurance Company v. Adams* 37 A 2d 345, (1944); *Bailey v. Pacific Mutual Life Insurance Company of California*, 6 A 2d 770, (1939).

Thus, appellant's argument that defendant insurance company "invoked the defense of fraudulent misrepresentation and had the burden of proving same," (Br. 7) fails to accurately characterize the case law in this jurisdiction. Assuming that the defendant insurance company had the burden of proving "fraudulent" misrepresentations, it is submitted that there is abundant evidence in the record that Lt. Swarn knew that he had a serious kidney disease and was so advised by each of the examining physicians.¹ In support of her argument, appellant frequently

¹ "Mel A. Forman:

"... Q. Doctor, do you recall whether or not you advised, you or anyone in your presence, advised Lieutenant Swarn of his condition? A. When you say of his condition, do you say—

Q. What was wrong with him, so far as you could— A. At the time, yes. Yes, I advised him." (J.A. 5a).

"Dr. Norman E. Jones:

"... A. I have down here, 'the patient remains asymptomatic. Physical examination is within normal limits. Diagnosis: glomerulonephritis. Sent to Medicine for biopsy to prove diagnosis.'

Q. Now, was any of this information kept from Lieutenant Swarn? A. No.

Q. When was he told of the diagnosis, if you know? A. I'm sure I talked with him. I generally tell all my patients what they have when I see them. And I'm sure I talked with him at that time and told him that I wanted to get a biopsy to prove his diagnosis.

I didn't write it down, you know. But, otherwise, I wouldn't have been able to get a kidney biopsy. He wanted to know why did I want it." (J.A. 22a).

resorts to testimony by the two examining doctors that Lt. Swarn was "asymptomatic." Dr. Jones explained how a person could be "asymptomatic" and at the same time be afflicted with glomerulonephritis (J.A. 31a). He explained that although the patient can be actually afflicted with the disease of glomerulonephritis, accompanied by hypertension and albuminuria, that the "body adjusts to tolerate it"; that "asymptomatic" described the condition of the patient from the *patient's* point of view (J.A. 31a).

When the doctors testified that Lt. Swarn was "asymptomatic" they were not testifying that he did not have objective symptoms of glomerulonephritis. To the contrary, there is ample evidence in the record of the objective symptoms of the disease, i.e. elevated ASO titer, blood and abnormal casts in the urine, abnormal albuminuria (J.A. 20a, 21a). In fact, Lt. Swarn was not "always asymptomatic" as asserted by appellant (Br. 14). His initial complaint to Dr. Forman on October 13, 1966, was frequency of and pain on urination (J.A. 4a, 14a, 16a, 17a). Later, on November 30, 1966, he complained to Dr. Jones of urine discoloration (J.A. 23a) and a burning sensation upon urination (J.A. 20a, 23a, 24a). Lt. Swarn himself initiated the series of office visits with the doctors on October 13, 1966, when he first saw Dr. Forman at Hancock Air Force Base, complaining of frequency of and pain on urination. (J.A. 4a)

Appellant characterizes the first of Lt. Swarn's eight doctors' appointments as "a routine visit associated with a change of assignment." His initial visit to a doctor was prompted by no trivial complaint, but by a serious interruption to his genito-urinary functions, i.e. burning on urination and frequency of urination. Each of his following seven appointments with doctors was as the result of the initial symptoms and he underwent numerous (and sometimes painful) tests to confirm the doctors' diagnosis.

Since appellant seems to make a serious point of the first visit being solely in connection with a change of assignment, the Court's attention is respectfully directed to the following colloquy between counsel and Dr. Forman (J.A. 4a):

"Q. You state that the first occasion was October 13, 1966. Would you state under what circumstances Lt. Swarn came to you? A. Well, again, from the records that I have before me, he apparently had a problem with his genital (*sic*) urinary tract, complaining of the symptoms of frequency of urination and occasional pain on urination for a period of several days. And examination was therefore centered about the *complaints which were made by the patient.*"

Nowhere in the entire record is there even a trace of evidence to support appellant's theory that Lt. Swarn's first appointment nor, in fact, any of the subsequent seven, were in the remotest way "routine" or prompted by a "change of assignment." That it was medical problems and not, as appellant suggests, a change of assignment that caused Lt. Swarn to see Dr. Jones is confirmed by Dr. Jones' testimony regarding *his* initial appointment with Lt. Swarn on November 17, 1966, at Tyndall Air Force Base, Florida (J.A. 20a):

"A. . . . He was seen on sick call up there and he had been seen previously at another dispensary at which time they found red blood cells and albumin in his urine, and he was told to report in at his next base for evaluation of this problem, which he came to see us on sick call."

The Court had before it a record of a total of eight doctors' appointments within 75 days—four visits to Dr. Forman at Hancock Air Force Base, New York, through and including November 17, 1966, and four visits to Dr. Jones at Tyndall Air Force Base, Florida, beginning November 30, 1966, through December 21, 1966. There can be

no question but that these doctors' examinations did occur, and that they occurred not only within five years of the date of the application, but within a period of ninety days before the application.

Appellant makes a final point that the agent of the insurer filled in most of the policy application which was signed by the decedent. This bald inference of wrongdoing by the insurer or its agent is totally unsupported by any evidence of irregularity, negligence in omission or commission, or evidence that the answers contained in the application differed in any respect from those provided by Lt. Swarn.

ARGUMENT III

Lt. Swarn owed a duty to the defendant to notify it of his hospitalization in a Veterans Administration hospital occurring after the application was signed but prior to the effective date of the policy.

The District Court found that the policy issued by the defendant insurer was to become effective on March 1, 1967, in accordance with the terms of the agreement between the applicant and defendant. It further found that the insured entered a Veterans Administration hospital on February 23, 1967, and was a patient there on March 1, 1967 (S.A. 5). These findings are supported by the evidence (J.A. 113a, 71a, 72a).

Here, by operation of the terms of the application, the contract of insurance did not issue until the date designated by applicant under question 10 of the application, March 1, 1967, (J.A. 113a):

"10. Date of issue desired

- (a) Date policy same date this application is approved.
- (b) Date policy to save insurance age.
- (c) x Date policy ahead to March 1, 1967.

Appearing above Lt. Swarn's signature on the application, appeared the statement: "I agree that any insurance approved pursuant to this application shall take effect * * * on the date designated by me in Part C of Question 10 * * * provided I am still insurable for such insurance according to the company's standards and practices." (J.A. 114a).

Clearly, in view of the foregoing quotation, the parties did not contract exclusively on the basis of conditions at the time of the application, but on the basis of conditions when the policy became effective.

Changes in conditions material to the risk which occur between the opening of negotiations for insurance and the issuance of a policy (here, by agreement of the parties, March 1, 1967) must be divulged. *Stipcich v. Metropolitan Life Insurance Company*, 277 U.S. 311 (1928).

Defendant's Underwriter testified that if it were to come to the attention of the company that the applicant was hospitalized in a Veterans Administration hospital subsequent to the date of the application but prior to the effective date of the policy, the policy would not be issued in the absence of additional information (J.A. 88a, 89a).

Here, Lt. Swarn was hospitalized in a Veterans Administration hospital for 5 days prior to the effective date of the policy, and, under the *Stipcich* case, *supra*, owed the duty to the defendant to notify it of this material change of condition. The company was clearly entitled to information regarding hospitalization of an applicant prior to the effective date of the contract of insurance. In the absence of such notification, the company was entitled to vitiate the contract.

CONCLUSION

For the reasons set forth above, the judgment of the District Court should be affirmed.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3128-68

JOELENA WELLS SWARN, *Plaintiff*,

v.

UNITED SERVICES LIFE INSURANCE COMPANY, *Defendant*.

Filed Apr. 22, 1970

Robert M. Stearns, Clerk

Findings of Fact and Conclusions of Law

In this proceeding the plaintiff as the widow and the named beneficiary on a life insurance policy issued to her deceased husband by the defendant company, seeks to recover the proceeds of that policy. The defendant resisted payment and requested that the proceedings be dismissed, claiming that in the application for insurance the decedent made false statements and material misrepresentations, which voided the policy.

Upon consideration of all of the pleadings, testimony, evidence, arguments, and memoranda of the counsel for the parties, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff, Joelena Wells Swarn, is the beneficiary under a life insurance policy issued by the defendant corporation, United Services Life Insurance Company, valued at \$20,000, insuring the life of her deceased husband, Charles Lightford Swarn.

The insured died on August 22, 1967, at the age of 24. The widow's claim was rejected by the defendant and on December 18, 1968, a complaint was filed with this Court.

2. The insured was, at the time of making the application, a college graduate, and a second lieutenant in the United States Air Force, stationed on temporary duty at Tyndall Air Force Base, Florida. He entered the Air Force in September, 1966, and was first assigned to Hancock Air Force Base in New York State.

3. On October 13, 1966, while stationed at Hancock Air Force Base, the insured was seen at sick call by Dr. Mel Forman, a general medical officer without any specialty, complaining of the symptoms of frequency of urination and occasional pain on urination. Physical tests revealed no apparent tenderness over his kidney area and he was started on an antibiotic treatment. Laboratory studies revealed bacteria in the urine of which the insured was informed.

4. The insured was told to return on October 26, 1966. At this time his symptoms had improved and the antibiotic treatment was continued.

5. The insured was seen by the same medical official on November 6, 1966. Laboratory studies showed no further growth of bacteria in the urine. He was again told to return on November 17, 1966, at which time a rectal examination revealed a tender prostate gland.

6. Throughout this period of examination by and consultation with Dr. Forman the evidence showed that except for visits of October 13th and November 17th, 1966, the insured was generally asymptomatic.

7. No definite diagnosis was made by Dr. Forman as to the cause of the insured's complaints. However, the in-

sured was told of his physical condition as found by the doctor.

8. In November, 1966, Lieutenant Swarn was transferred to Tyndall Air Force Base, Florida. Prior to leaving, he was told by Dr. Forman to continue his medical consultation and treatment at his new assignment.

9. On November 30, 1966, while at Tyndall Air Force Base, Swarn was seen by a flight surgeon, Dr. Norman E. Jones, for evaluation. He was also seen by him on three subsequent occasions, to wit, December 1st, 14th and 21st, 1966. During the course of these visits various tests were performed and from the results obtained Dr. Jones made a tentative diagnosis that the insured was suffering from a disease of the genito-urinary tract known as glomerulonephritis. The diagnosis was based upon findings of casts in the urine, four-plus albuminuria, and a high ASO titer.

Throughout this period of examination by and consultation with Dr. Jones the insured complained of clouded urine and a burning sensation upon urinating, but otherwise he was asymptomatic.

10. On or before December 21, 1966, Dr. Jones informed the insured that he had a diseased genito-urinary tract tentatively diagnosed as glomerulonephritis and requested that he secure a biopsy to substantiate the diagnosis. The insured was also prescribed medication for this disease. At the time, the insured had knowledge of his condition and was aware of the tentative diagnosis.

11. In answer to question 27 (a) of the application for insurance:

"Date of your latest service physical examination," insured answered, "September, 1964."

In answer to question 27 (b) "Details of any hospitalization, medication or treatment recommended as a result thereof. If none, so state." insured answered "None."

12. In answer to question 28 "Name all other physicians and practitioners you have consulted or who have examined or treated you within the last five years. State for what conditions or purposes. Give dates and full details. If none, so state." insured answered "None."

13. That in answer to question 30 "Are you now to the best of your knowledge and belief in good health and free from defect or deformity?" insured answered "Yes."

14. That above the insured's signature on the application the following statement appears:

"All statements and answers in this application are made by me to obtain the insurance hereby applied for and are complete, true and correct, and I request and expect the Company to accept and rely on them.

"I agree that any insurance approved pursuant to this application shall take effect at 12 o'clock noon, Eastern Standard Time, on the date of such approval by the Company at its Home Office or on the date designated by me in Part C of Question No. 10, whichever is the later date, provided that I am then still insurable for such insurance according to the Company's standards and practices."

15. The testimony clearly showed that in response to question 27, an applicant such as the insured could reasonably conclude that the question referred to periodically scheduled general physical examinations rather than "sick calls."

16. Question 28 was ambiguous and permitted the inference on the part of an applicant such as the insured that the information sought did not relate to minor complaints and ailments. However, when read in connection with question 27, question 28 could not reasonably have been interpreted to exclude service physicians. The record of testimony shows that the insured knew he was suffering

from and was being treated for a serious disease of his genito-urinary tract.

17. On January 10, 1967, when the insured made application with the defendant Company, on basis of his symptoms and the medical information received by him, he knew that he was suffering from a serious disease of his genito-urinary tract.

18. The insurance policy issued by the defendant to the insured was to become effective on March 1, 1967, in accordance with the terms of their agreement.

19. The insured entered a Veterans Administration hospital on February 23, 1967, and was a patient in that hospital on March 1, 1967.

In accordance with the foregoing findings of fact the Court makes the following:

CONCLUSIONS OF LAW

1. That between October 13, 1966 and December 21, 1966, the insured had been examined and treated by physicians for a serious disease of his genito-urinary tract. The insured's answer to question No. 28 was, therefore, false and known by him to be false.

2. On January 10, 1967, when the insured made application for insurance he knew that he was not in good health and free from defect. That on the basis of stated symptoms and the medical information received by him he knew that he had a serious disease of the genito-urinary tract for which he was being treated. That the insured's answer to Question 30 was, therefore, false.

3. That the answers to questions 28 and 30 were material to the risks assumed by the insurer.

4. That the defendant company was entitled to avoid the policy of insurance issued on the life of the insured; that

the plaintiff is not entitled to the proceeds of said policy, and it is, therefore, this 22nd day of April, 1970.

ORDERED, that judgment against the plaintiff and in favor of the defendant be and is hereby entered.

/s/ BARRINGTON D. PARKER
Judge

THOMAS M. O'MALLEY, Esquire
Attorney for Plaintiff
1620 K Street, N. W.
Washington, D. C. 20005

KENT D. THORUP, Esquire
Attorney for Defendant
733 - 15th Street, N. W.
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U.S. AIR FORCE
Department of the Air Force
Form A-32

945
C43 - GPO - 34-77350-1

CLINICAL RECORD		CONSULTATION SHEET	
REQUEST			
TO: <i>Internal Medicine</i>	FROM: (Requesting ward, unit, or clinic) <i>PS 6</i>	DATE OF REQUEST <i>21 Dec 66</i>	
REASON FOR REQUEST (Complaints and findings) <i>pt with hx of RBC's, casts, WBC's all in urine for 3 months. Asymptomatic. P.R. WNL all studies WNL except for ASO of 200. What do you think & how about a biopsy during</i>			
PROVISIONAL DIAGNOSIS <i>Glomerulonephritis</i>			
DOCTOR'S SIGNATURE <i>[Signature]</i>	APPROVED	PLACE OF CONSULTATION <input type="checkbox"/> INCLINIC <input type="checkbox"/> ON CALL	<input type="checkbox"/> EMERGENCY <input type="checkbox"/> ROUTINE

CONSULTATION REPORT

DEC 21 1966 Intriguing fix. Frequent and on various slides of protein showing occasional positive initial PPD tests. St. pneumoniae + RBC's in urine were noted. Followup has shown persistence until most recent check. His IVP is normal. Both fix fix and general fix are negative for point fix of renal or metabolic disease. Patient feels fine. *E. Coli* was recovered on initial cult. and patient was Rx'd to Sulfa for same.

Suggest: Repeat multiple urinalyses and if pathologic sediment still present, from investigation studies for proteinuria and nephrotic disease in order.

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
PATIENT'S IDENTIFICATION (For typed or written entries give Name—last, first, middle; grade; date; hospital or medical facility)			

SWARN
Sumner
Chen

REGISTER NO.	WARD NO.

CONSULTATION SHEET
Standard Form 513
513-104

9-22-69 Dept's Ex. No 2 for ill. "A" thru "H"
James Gordon Sullivan, D.O.

HEALTH RECORD		CHRONOLOGICAL RECORD OF MEDICAL CARE
DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)	
	U.S. AIR FORCE MEDICAL SERVICE	
7 DEC 1966	<p>16-7 RBCS 4+ albumen. positive RBCS. Abundant. for 1 1/2 months. TUP culture. Positive. Urinary.</p> <p><i>[Signature]</i></p> <p>NORMAN E. JONES U.S. MC FMO</p>	

Form 10-10-60
 Cont. of A-32
 800-107

HEALTH RECORD		CHRONOLOGICAL RECORD OF MEDICAL CARE	
DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)		
6421 USAF DISPENSARY (ADC) HANCOCK FIELD SYRACUSE NEW YORK 13225			
AF O DENT MEDICAL SERVICE 7. AF HOSPITAL (ADC) ... FLORIDA			
30 NOV 61	<i>1st 7 RBCs to albumin</i> <i>urine with culture from negative</i> <i>PT feels perfectly healthy</i> <i>CBC, urine AS</i>		
	NORMAN E. JONES CAPT USAF MC FMO		
11 Dec 61	<i>Recurrent uric acid with culture</i> <i>not thy</i>		
	NORMAN E. JONES CAPT USAF MC FMO		
21 DEC 1961	<i>Remains asymptomatic</i> <i>for over</i> <i>Dr. Blomsted sent to medical</i> <i>for biopsy to prove Dr.</i>		
	NORMAN E. JONES CAPT USAF MC FMO		
SEX	RACE	GRADE, RATING, OR POSITION	ORGANIZATION UNIT
		2nd Lt.	
COMPONENT OR BRANCH		SERVICE, DEPT. OR AGENCY	
		USAF	
PATIENT'S FIRST NAME—FIRST NAME—MIDDLE NAME		IDENTIFICATION NO.	
Swearing, Charles L.		FV 3173472	
DATE OF BIRTH (day-month-year)			
16 Apr 43			

CHRONOLOGICAL RECORD OF MEDICAL CARE
 HANCOCK FIELD, 640

Form 514-106, June 1959
 Standard Form 514-106

U. S. GOVERNMENT PRINTING OFFICE: 1959 O-712-000

CLINICAL RECORD

LABORATORY RECORD

Severn Charles
 Lt. JG

aniline casts

PATIENT'S LAST NAME—FIRST NAME—MIDDLE NAME

X COLOR-APPEARANCE *light pink, thin*

REACTION *Acid*

X SPECIFIC GRAVITY *1.010*

X ALBUMIN *4 HHT*

X SUGAR *vec*

ACETONE

BILE

cont

Red Count Blood

REGISTER OR UNIT NO. WARD NO. ☐ BED PATIENT ☐ AMBULATORY

REQUESTED BY *W. M. R. PUGH* DATE OF REQUEST *7/23/64*

DATE, TIME, AND METHOD OF COLLECTION *Random, morning*

MICROSCOPIC REMARKS

2-3 Coarsely gran casts / HOC

0-1 finely gran. cast

25-30 RBC

15-20 WBC

2 H Bact.

DATE OF REPORT SIGNATURE (Specify Lab. if not part of clinical facility)

NAME OF MEDICAL FACILITY

Standard Form 514-106, June 1959
 Bureau of the Budget Circular A-32

GPO: 65-16-773-827

URINALYSIS

ATTACH 1ST REPORT ALONG LEFT MARGIN WITH TOP AT THIS LINE ↑

Severn Charles
 Lt. JG

REGISTER OR UNIT NO. WARD NO. ☐ BED PATIENT ☐ AMBULATORY

REQUESTED BY AND DATE *WILLIAM R. PUGH* DATE COLLECTED *30 Nov 64*

Clinical Path, USA MC, FMO

Chromatophores

PATIENT'S LAST NAME—FIRST NAME—MIDDLE NAME

X W.B.C. *8,300* R.B.C.

X DIFFERENTIAL COUNT

X NEUTROPHILS *49* X HEMATOCRIT *41*

BLASTS

X HEMOGLOBIN *13.6 gm*

MYELOCYTES

BANDS

LYMPHOCYTES *44*

MONOCYTES *6*

EOSINOPHILS *1*

PLATELETS *115,000*

PROTHROMBIN TIME *11.0 min*

C.S.F.

BLOOD MORPHOLOGY REMARKS

normal

DATE OF REPORT SIGNATURE (Specify Lab. if not part of clinical facility)

NAME OF MEDICAL FACILITY

Standard Form 514-106, June 1959
 Bureau of the Budget Circular A-32

GPO: 65-16-6024-6

HEMATOLOGY

D NO.

BY REPORTS

Standard Form 514-106

6424 USAF DISPENSARY (ADC)
 HAWCOCK FIELD

CLINICAL RECORD	RADIOGRAPHIC REPORTS

ATTACH 20 REPORT ALONG HERE AND SUCCEEDING ONES ON ABOVE LINES

ATTACH 20 REPORT WITH TOP AT THIS LINE

PATIENT'S LAST NAME — FIRST NAME — MIDDLE NAME

TTS
Swann Charles L.
Cut

D-1 FU 3173472
 (Above space for mechanical imprinting, if used)

PATIENT'S CLINICAL HISTORY, OPERATIONS, PHYSICAL FINDINGS, AND PRELIMINARY DIAGNOSIS

44 album, 30 RBC, 15.2 WBC granular
5.5 mg for TBP. Asymptomatic
D-9396 DATE OF REPORT *14 Dec 56*

An intravenous pyelogram was done. This shows prompt excretion of opaque substance bilaterally in equal concentration at the end of 1 minute. Both kidney collecting systems are rather generous but the calyceal cupping seems to be adequate with good cortex seen bilaterally. There is no evidence of impression defects on either kidney collecting system. I believe the findings are within limits of normal variation. It is suggested that a repeat flat film of the abdomen be obtained to exclude the possibility of a small partially calcified calculi overlying the lower collecting system of the right kidney.

N/S H. G. ALFRED, M.D.

SIGNATURE (Specify location of laboratory if not part of requesting facility)
 Standard Form 510-A (Rev. Aug. 1954)
 Prescribed by Bureau of the Budget
 Circular A-32 (Rev.)

RADIOGRAPHIC REPORT
 510-500

NAME OF HOSPITAL OR OTHER MEDICAL FACILITY

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle;
 grade; date; hospital or medical facility)

REGISTER NO.

WARD NO.

RADIOGRAPHIC REPORTS
 Standard Form 519
 519-100

6424 USAF DEPARTMENT (ADG)
 HANCOCK FIELD
 SYRACUSE NEW YORK 13225

Swann, Charles L

PATIENT'S LAST NAME — FIRST NAME — MIDDLE NAME		REGISTER NO.	WARD NO.
Siverson Charles L.			F50
AGE	SEX	(Check one)	
20	M	<input type="checkbox"/> SEEDING, WHEELCHAIR, OR STRETCHER <input type="checkbox"/> PATIENT <input checked="" type="checkbox"/> AMBULATORY	
EXAMINATION REQUESTED			
Flat plate abd.			
REQUESTED BY		DATE OF REQUEST	
[Signature]		21 Dec 66	
(Above space for mechanical imprinting, if used)			
PERTINENT CLINICAL HISTORY, OPERATIONS, PHYSICAL FINDINGS, AND PROVISIONAL DIAGNOSIS			
Request by Dr. Hordman for flat plate with 7" @ 10" distance			
FILM NO. D-9396		DATE OF REPORT 21 Dec 66	
RADIOGRAPHIC REPORT			

A repeat plain film examination of the abdomen shows no calcification overlying the lower pole of the right kidney. No abnormalities are noted.

OLIVER A. SORSDAHL, Capt, MC, USAF

PATIENT'S LAST NAME — FIRST NAME — MIDDLE NAME		REGISTER NO.	WARD NO.
Siverson Charles L.			F50
AGE	SEX	(Check one)	
23	M	<input type="checkbox"/> SEEDING, WHEELCHAIR, OR STRETCHER <input type="checkbox"/> PATIENT <input checked="" type="checkbox"/> AMBULATORY	
EXAMINATION REQUESTED			
Chest 2-7			
REQUESTED BY		DATE OF REQUEST	
[Signature]		21 Dec 66	
(Above space for mechanical imprinting, if used)			
PERTINENT CLINICAL HISTORY, OPERATIONS, PHYSICAL FINDINGS, AND PROVISIONAL DIAGNOSIS			
? Normal			

FILM NO. D-9396	DATE OF REPORT 1 Dec 66
RADIOGRAPHIC REPORT	

There are some calcified foci in the left mid lung field and some calcification in left hilar nodes. The chest is otherwise unremarkable.

OLIVER A. SORSDAHL, Capt, MC, USAF

Standard Form 518-A (Rev. Aug. 1954)
Prescribed by Bureau of the Surgeon
Circular A-32 (Rev.)

RADIOGRAPHIC REPORT
518-000

642d USAF DISPENSARY
HANCOCK FIELD
SYRACUSE NEW YORK 13225

Standard Form 54-1-Rev. June 1954
Bureau of the Budget Circular A-22

CFO 63-4-772-627

URINALYSIS:

Standard Form 514-B—Rev. June 1959.
Bureau of the Budget Circular A-22

SP2 62-16-55274-4

HEMATOLOGY

Swain Charles
LT

Lyndall

REGISTER OR UNIT NO.	WARD NO.	<input type="checkbox"/> BED PATIENT
	<i>FS-2</i>	<input type="checkbox"/> AMBULATORY
REQUESTED BY AND DATE		DATE AND TIME COLLECTED
<i>McDon</i>		<i>70 MAR 61</i>
CLINICAL DATA		
<i>Blood urine</i>		
PATIENT'S LAST NAME-FIRST NAME-MIDDLE NAME		EXAMINATION REQUESTED
<i>Swain Charles</i>		<i>ASO titer</i>
SPECIMEN AND SOURCE		
<i>Blood</i>		
ASO TITER		
<i>200</i>		
DAN MOUNTINGS, MAJ. NSC		
USA MEDICAL LABORATORY		
T. MCPHERSON, GA. 30330		
DATE OF REPORT		SIGNATURE (Specify Lab. if not part of requesting facility)
		<i>McDon</i>
NAME OF MEDICAL FACILITY		

66 1 07 993372

7 DEC 66

Pr 8-704

Swain Charles
AF 2/LT

REGISTER OR UNIT NO.	WARD NO.	<input type="checkbox"/> BED PATIENT
		<input checked="" type="checkbox"/> AMBULATORY
REQUESTED BY AND DATE		DATE AND TIME COLLECTED
<i>Dr. Froman</i>		
CLINICAL DATA		
<i>On pyelitis</i>		
PATIENT'S LAST NAME-FIRST NAME-MIDDLE NAME		EXAMINATION REQUESTED
<i>Swain Charles</i>		<i>Cult. Cx Cr</i>
SPECIMEN AND SOURCE		ANTIBIOTIC THERAPY
<i>stool bottle</i>		
REPORT		
<i>+ Sme</i>		
<i>no growth.</i>		
DATE OF REPORT		SIGNATURE (Specify Lab. if not part of requesting facility)
<i>11/8/66</i>		<i>Froman</i>
NAME OF MEDICAL FACILITY		

Standard Form 514-14-Rev. June 1956.

66-10-00000-6

BACTERIOLOGY

